

RESTATED CERTIFICATE OF INCORPORATION

OF

CATALINA MARKETING CORPORATION

In accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Restated Certificate of Incorporation of CATALINA MARKETING INCORPORATED (the "Corporation") was duly adopted by the Board of Directors of the Corporation, and thereafter the holder of all of the outstanding capital stock of the Corporation, approved the adoption of this Restated Certificate of Incorporation by its written consent. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 27, 1992 (the "Existing Certificate"). The Existing Certificate is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the Corporation is CATALINA MARKETING CORPORATION.

SECOND: The address of the registered office of the Corporation in the State of Delaware is The Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, and the name of its registered agent at that address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "GCL").

FOURTH:

A. The Corporation is authorized to issue two classes of shares designated "Common Stock" and "Preferred Stock," respectively. The number of shares of Common Stock authorized to be issued is 30,000,000, par value \$.01 per share, and the number of shares of Preferred Stock

authorized to be issued is 5,936,475, par value \$.01 per share.

B. Other than the shares of Series A Preferred Stock and Series D Preferred Stock referenced below, the designations, powers, preferences and rights of which, and the qualifications, limitations and restrictions of which, are set forth below, the shares of Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation is hereby authorized, by adopting appropriate resolutions and causing one or more certificates of designation to be executed, acknowledged, filed, recorded and to become effective in accordance with the GCL, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof, including but not limited to the fixing or alteration of the dividend rights, dividend rate, conversion rights, exchange rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, and the liquidation preferences of any wholly unissued series of shares of Preferred Stock, or any of them; and to increase or decrease the number of shares of any series subsequent to the issue of the shares of that series, but not above the total number of authorized shares of Preferred Stock and not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. Except as may otherwise be required by law or this Certificate of Incorporation, the terms of any series of Preferred Stock may be amended without the consent of the holders of any other series of Preferred Stock or of Common Stock.

C. Section 1. Designation.

One hundred forty-seven thousand (147,000) shares of Preferred Stock shall be designated Series A Preferred Stock, and seven hundred eighty-nine thousand four hundred seventy-five (789,475) shares of the Preferred Stock shall be designated Series D Preferred Stock. Such series of Preferred Stock shall be identical with each other in all respects except as otherwise provided herein.

Section 2. Liquidation Rights.

(A) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of each share of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock of the Corporation by reason of their ownership thereof, an amount equal to Thirteen Dollars and Fifty Cents (\$13.50) per share in the case of Series A, plus any declared but unpaid dividends, if any thereon ("Series A Liquidation Value"), Fifteen Dollars and Five Dollars and Seventy Cents (\$5.70) per share in the case of Series D, plus declared and unpaid dividends, if any thereon (the "Series D Liquidation Value"). After such payment shall have been made in full to the holders of the Preferred Stock, they shall not be entitled to any further participation in the assets of the Corporation. If assets of the Corporation available for distribution to stockholders are insufficient to permit payment in full of amounts to which the holders of Preferred Stock are entitled pursuant to this paragraph, such holders of preferred stock shall participate pro rata in proportion to their respective Liquidation Values, in such available assets.

(B) All the preferential amounts to be paid to the holders of the Preferred Stock under this Section 2 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to, the holders of the Common Stock in connection with such liquidation, dissolution or winding up. After the payment or the setting apart of payment to the holders of the Preferred Stock of the preferential amounts so payable to them, the holders of Common Stock shall be entitled to receive all remaining assets of the Corporation.

(C) A consolidation or merger of the Corporation with another corporation or entity or a sale of all or substantially all of the assets of the Corporation shall be regarded as a liquidation, dissolution or winding up of the affairs of the Corporation with respect to the Preferred Stock within the meaning of this Section 2 unless such consolidation or merger is not intended to effect a change in the ownership or control of the Corporation or of its assets and is not intended to alter materially the business or assets of the Corporation, including, by way of example and without limiting the generality of the foregoing, a

consolidation or merger which merely changes the identity, form or place of organization of the Corporation, or which is between or among the Corporation and any of its direct or indirect subsidiaries; however, any such event shall not be treated as a liquidation, dissolution or winding up if such treatment is waived by the holders of a majority of the Series A and Series D then outstanding, voting as a single class on an as if converted basis, and by the holders of a majority of the Series D then outstanding voting separately as one class.

Section 3. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(A) Right to Convert. Each share of each Series of Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by the Conversion Rate, determined as hereinafter provided, in effect at the time of conversion for such series of Preferred Stock. The Conversion Rate at which shares of Common Stock shall be deliverable upon conversion without the payment of any additional consideration by the holder thereof (the "Conversion Rate") shall initially be: (i) for the Series A, five (5) shares of Common Stock with respect to each share of Series A, and (ii) for the Series D, one (1) share of Common Stock with respect to each share of Series D. Such initial Conversion Rate with respect to each series of Preferred Stock shall be subject to adjustment, in order to adjust the number of shares of Common Stock into which such series of Preferred Stock is convertible, as hereinafter provided.

(B) Automatic Conversion. Each share of a series of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion rate in effect with respect to such series of Preferred Stock (i) with respect to a particular series of Preferred Stock only, upon the receipt by the Corporation of a written notice from the holders of two-thirds or more of the then outstanding shares of such series electing to convert their shares of that series or the conversion at any time of two-thirds or more of the shares of such series issued prior to such conversion or (ii) upon the closing of a firm commitment underwritten public offering pursuant to an effective registration

statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public having an aggregate offering price resulting in net proceeds after underwriting discounts and commissions to the Corporation of not less than Eight Million Dollars (\$8,000,000) (in the event of which offering, the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted that Preferred Stock until immediately prior to the closing of such offering); provided however in the case of the Series D, such automatic conversion shall not be effective unless the price to the public of the Common Stock in such offering is at least \$6.00 per share, appropriately adjusted for any stock dividends, stock splits, combinations or subdivisions of shares, or for recapitalizations or the like. Each person who holds of record shares of Series A or series D immediately prior to such automatic conversion shall be entitled to all dividends which were declared prior to the time of the automatic conversion, but not paid on such Series A or Series D, pursuant to Section 6 hereof. Such dividends shall be paid to all such holders within thirty (30) days of the automatic conversion.

(C) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the fair market value of such fractional share, as determined by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein his name or the name or names of his nominees in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to his nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid, together with cash in lieu of any fraction of a share. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common

Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(D) Adjustments to Conversion Rate.

(i) If the Corporation shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares or pay a dividend in shares of Common Stock on the outstanding Common Stock, or combine the outstanding shares of Common Stock into a smaller number of shares, the Conversion Rate in effect immediately prior to such subdivision, dividend or combination shall be adjusted proportionately. Anything in this Section 3(D)(i) to the contrary notwithstanding, the Corporation shall not be required to give effect to any adjustment in the Conversion Rate unless and until the net effect of one or more adjustments, determined as provided above, shall have resulted in a change of the Conversion Rate by at least one-hundredth of one share of Common Stock, and when the cumulative net effect of one or more adjustments so determined shall be to change the Conversion Rate by at least one-hundredth of one share of Common Stock, such change in the Conversion Rate shall thereupon be given effect.

(ii) If the Corporation shall effect any capital reorganization or any reclassification of the capital stock of the Corporation or in case of the consolidation or merger or exchange of the Corporation with or into another Corporation or the conveyance of all or substantially all of the assets of the Corporation to another Corporation, each share of Preferred Stock shall thereafter be convertible into the number of shares of Common Stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such shares of Preferred Stock at the Conversion Rate in effect immediately prior to such event, would have been entitled upon such reorganization, reclassification, consolidation, merger, exchange or conveyance; and, in any such case, appropriate adjustment, as determined by the Board of Directors, shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of Preferred Stock, to the end that the provisions set forth herein, including provisions with respect to changes in and other adjustments of the Conversion Rate, shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or

other property thereafter deliverable upon the conversion of the shares of Preferred Stock.

(E) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or Bylaws or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of each series of Preferred Stock against impairment.

(F) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Rate in effect with respect to each series of Preferred Stock pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) any such adjustments and readjustments, (ii) the Conversion Rate at the time in effect with respect to each series of Preferred Stock, and (iii) the number of shares of Common Stock and the amount, if any, of any other property which at the time would be received upon the conversion of a share of each series of Preferred Stock.

(G) Notice of Record Date. If the Corporation shall (a) declare a dividend or any other distribution payable upon its Common Stock otherwise than in cash or in its Common Stock; (b) authorize the granting to the holders of its Common Stock of rights to subscribe for or purchase any shares of stock of any class or to receive any other rights; (c) effect any capital reorganization of the Corporation, reclassification of the capital stock of the Corporation, consolidation, merger or exchange of the Corporation with or into another Corporation, or conveyance of all or substantially all of the assets of the Corporation to another Corporation; or (d) voluntary or involuntary dissolve, liquidate, or wind up the Corporation, then and in any such case, the Corporation shall cause to be mailed to

the transfer agent or agents for, and to the holders of record of the outstanding shares of Preferred Stock at least 20 days and not more than 60 days prior to the applicable date or dates hereinafter specified, a notice describing such event and stating (i) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (ii) the date on which such reclassification, reorganization, consolidation, merger, exchange, conveyance, dissolution, liquidation or winding up is to take place, and the date, if any is to be fixed, as of which holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, reorganization, consolidation, merger, exchange, conveyance, dissolution, liquidation or winding up of the Corporation.

(H) Payment of Taxes. The Corporation will pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Preferred Stock pursuant hereto. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of such series so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(I) Common Stock Reserved. The Corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect conversion of the issued and outstanding Preferred Stock.

Section 4. Redemption.

(A) The Corporation shall redeem the Series D as follows: (i) on the fourth anniversary of the Original Issue Date at the Redemption Price, as hereafter defined, one-sixth of the Base Number of the shares of Series D held by a holder of Series D, rounded upward to the nearest whole share; (ii) the remaining five-sixths in equal amounts of one-sixth, every six months thereafter, of the Base Number of the shares of Series D held by such holder, rounded

upward to the nearest whole share, plus, if the Corporation failed to redeem the full amount of shares of Series D which it was required to redeem previously, such additional amount of shares of Series D. The Redemption Price of each share of the Series D Liquidation Value on the date on which the shares are redeemed by payment in cash in full. Upon payment in full for redeemed Series D, the rights of the holders of Series D shall cease with respect to such redeemed stock. "Base Number" shall mean the number of shares of Series D which each holder thereof holds on the redemption date therefor provided for in clause (i). For purposes of determining the number of shares which are redeemable, a successor or transferee of a holder of Series D on a redemption date shall be entitled to have redeemed the pro rata portion of the Base Number of the predecessor holder of Series D, as applicable, based upon the number of shares the successor or transferee holds relative to such Base Number. If any portion of or all the Base Number of shares which the Corporation is required to redeem on a given redemption date have been converted or have been surrendered for conversion pursuant to Section 3 of this Article FOURTH B. prior to such redemption date, then the number of shares the Corporation shall be required to redeem pursuant to this Section 4 on such redemption date shall be reduced by such number of shares so converted and so surrendered for conversion. For purposes of this Section 4, Original Issue Date of Series D shall mean August 24, 1988.

(B) If funds of the Corporation available for payment of such redemptions are insufficient to permit payment in full of amounts to which the holders of Series D are entitled, then such holders will participate in such available funds and shares of Preferred Stock shall be redeemed from time to time pro rata as such funds become available based upon the relative redemption prices then payable on each share required to be redeemed.

(C) The Corporation will take all actions necessary to maintain unimpaired and protect the redemption rights provided for in this Section 4 and to assure prompt and timely payment of all moneys owed as a result of the redemptions provided for in this Section 4, including, but not limited to, reappraisal of its corporate assets.

(D) The Corporation shall notify each holder of Series D at least thirty days prior to the redemption date of stock held by such holder, setting forth the redemption date, the number of shares to be redeemed and the redemption

arrangements. Prior to the designated redemption date, the holder shall deliver to the Corporation or its transfer agent certificates representing the shares of Series D to be redeemed duly endorsed for transfer. If less than all shares represented by such certificates are redeemed, a new certificate shall forthwith be issued for the unredeemed shares. The Corporation shall on the redemption date remit to each holder who has duly delivered certificates representing shares being redeemed, the redemption price for the redeemed shares. If the certificate is not so delivered and the Corporation has set aside the funds for payment thereof with a banking institution with assets of not less than \$1 billion, then the Corporation shall treat such shares as were to have been redeemed and for which the redemption price has been so set aside as cancelled and the holder thereof shall have no rights as a stockholder thereof.

(E) In the event that the most senior secured lender to the Company requires the postponement of any redemption required herein, the redemption schedule set forth in subsection (A) above shall be adjusted by postponement of the redemption dates for so long as shall be required by such lender and by agreement of the holders of at least a majority of the outstanding shares of the series of Preferred Stock affected by such postponement.

(F) Notwithstanding any other provision of this Certificate of Incorporation and subject to the provisions of the GCL, a majority of the shares of the Series D, voting together as a single class on an as if converted basis, may waive or repeal any of the terms or conditions under this Section 4 with respect to required redemptions of any series, subject to such other approvals as may be required by applicable law.

Section 5. Voting Rights.

Except as otherwise required by this Certificate of Incorporation or by law, the holders of Preferred Stock and the holders of the Common Stock shall be entitled to notice of any stockholders' meeting and to vote upon or consent to any matter submitted to a stockholder for a vote, and shall vote or consent together as a single class and not as separate classes, on the following basis: (i) holders of issued and outstanding Common Stock shall have one vote per share; and (ii) holders of Preferred Stock issued and outstanding shall have that number of votes per share as is equal to the number of shares of Common Stock into which

each such share of Preferred Stock held by such holders is then convertible.

Section 6. Dividend Rights.

(A) Dividends may be paid on the Preferred Stock when and as declared by the Board of Directors, provided that the amount of the dividend declared on each share of Preferred Stock, whatever the series, is equal and provided further that no such dividend may be declared or paid until all Preferred Stock which is then required to be redeemed has been redeemed by payment of cash in full or by the setting aside of funds equal to such required redemption payment in full.

(B) Notwithstanding any provisions in subsections 6(A), dividends which have been declared on any series of Preferred Stock but have not been paid prior to an automatic conversion pursuant to Section 3(B) of this Article FOURTH B., hereof shall be payable within thirty (30) days of the closing contemplated therein to each person who holds of record any shares of such series of Preferred Stock immediately prior to the automatic conversion.

Section 7. Covenants.

(A) Except as otherwise required by law or this Certificate of Incorporation, so long as at least Seventy-Three Thousand Five Hundred (73,500) shares of Series A, Three Hundred Ninety-Four Thousand Seven Hundred Thirty-Seven (394,737) shares of Series D shall be outstanding (as adjusted for all subdivisions and combinations) and except as provided in Subsection 7(B) below, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of seventy percent (70%) of the total shares of Series A and Series D then outstanding voting as a single class on an as if converted basis.

(i) amended, repeal or acquiesce in, an provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws if such action would alter, change, conflict with or limit the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Preferred Stock, or take any such action which would increase or decrease to a number of shares less than the number of such shares of such series then issued and outstanding the aggregate number of authorized shares of any series of Preferred Stock, or alter or change the powers, preferences or special rights of the

shares of any series of Preferred Stock so as to affect such series adversely;

(ii) reclassify any Common Stock into shares having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Preferred Stock;

(iii) pay or declare any dividend or make any distribution on any shares of Common Stock, except as otherwise provided herein, or apply any of its assets to the redemption, retirement, purchase or other acquisition directly or indirectly, through subsidiaries or otherwise, of any shares of Common Stock except from employees or directors of or advisors or consultants to the Corporation upon termination of employment by or service to the Corporation;

(iv) sell, lease, dispose of or otherwise transfer all or substantially all of its assets for a price less than \$40,000,000; or

(v) become a party to any merger, consolidation, reorganization or other acquisition or commitment to take any such action for a price which would result in the stockholders receiving less than \$40,000,000, unless such transaction does not effect a change in ownership or control of the Corporation and is not intended to alter materially the business of the Corporation.

(B) Notwithstanding any requirements set forth in subsection (A) of this Section 7, the Corporation may upon obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares entitled to vote thereon and, in addition, the affirmative vote or written consent of the holders of seventy percent (70%) of each series of the outstanding shares of the Series A, and Series D Preferred Stock alter the conversion formula set forth in Article FOURTH B., Section 3 for the Series A, and Series D Preferred Stock.

Section 2. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

FIFTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is

expressly authorized to make, repeal, alter, amend and rescind the Bylaws of the Corporation.

SIXTH: The business and affairs of the Corporation shall be managed by and under the direction of the Board of Directors.

A. Organization

The exact number of directors of the Corporation shall be as specified in, or pursuant to, the Bylaws, as the same may be amended from time to time. The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. Each director shall serve for a term ending on the third annual meeting of stockholders of the Corporation following the annual meeting of stockholders at which such director was elected; provided, however, that the term of the initial Class I directors shall terminate on the date of the annual meeting of stockholders of the Corporation held in 1992; the term of the initial Class II directors shall terminate on the date of the annual meeting of stockholders of the Corporation held in 1993; and the term of the initial Class III directors shall terminate on the date of the annual meeting of stockholders of the Corporation held in 1994. The foregoing notwithstanding, each director shall hold office until the annual meeting for the year in which his term expires and until his successor shall have been elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Elections of directors need not be by written ballot except and to the extent provided in the Bylaws.

Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately by 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 the resolution or resolutions adopted by the Board of Directors pursuant to Section B of Article FOURTH applicable thereto, which resolution or resolutions have been incorporated into one or more certificates of designation in accordance with the GCL, and such directors so elected shall not be divided into classes pursuant to this Article SIXTH unless expressly provided by such terms.

Subject to the immediately preceding paragraph, at each annual election, the directors chosen to succeed those whose terms then expire shall be of the same class as the directors they succeed, unless, by reason of any intervening changes in the authorized number of directors, the Board of Directors shall designate one or more directorships whose term then expire as directorships of another class in order more nearly to achieve equality of the number of directors among the classes of directors. Notwithstanding the rule that the three classes of directors shall be as nearly equal in number of directors as possible, in the event of any change in the authorized number of directors, each director then continuing to serve as such shall continue nevertheless as a director of the class of directors of which he is a member until the expiration of his current term or his prior death, resignation, retirement, disqualification or removal. If any newly created directorship may be allocated to one of two or more classes of directors consistent with the rule that the three classes of directors shall be as nearly equal in number of directors as possible, the Board of Directors shall allocate it to that of the available classes whose term of office is due to expire at the earliest date following such allocation. If the number of authorized directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case will a decrease in the number of directors shorten the term of any incumbent director.

B. Vacancies

Any vacancy on the Board of Directors, however resulting, may be filled by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy, however resulting, shall hold office for the remainder of the full term of the class to which such director shall have been elected and until such director's successor shall have been elected and shall qualify.

C. Removal

Any or all of the directors may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least eighty percent (80%) of the Voting Power (as defined in Article TWELFTH, Section C.2) of the Corporation.

SEVENTH: No director shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided that this Article SEVENTH shall not eliminate or limit the liability of a director (i) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which such director derives an improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL as so amended. No amendment to or repeal of this Article SEVENTH shall adversely affect any right or protection of any director of the Corporation existing at the time of such amendment or repeal for or with respect to acts or omissions of such director prior to such amendment or repeal.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

NINTH: Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders. Advance notice of matters to be considered at such meetings, including stockholder proposals and nominations of persons for election to the Board of Directors, shall be given within the time and in the manner provided in the Bylaws of the Corporation. Except as otherwise required by law and subject to any provision fixed by, or pursuant to, Article FOURTH hereof relating to the rights of the holders of any one or more series of Preferred Stock to call special meetings as provided in any certificate or certificates of designation adopted by the Board of Directors under the second paragraph of said Article FOURTH, special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board of Directors of the Corporation pursuant to a resolution approved by a majority of the entire Board of Directors, or by a committee of the Board of Directors

(duly designated by the Board of Directors) or by the Chairman of the Board or President of the Corporation if the powers and authority of such committee or person, as provided in a resolution of the entire Board of Directors or in the Bylaws of the Corporation, include the power to call such meetings, but such special meetings shall not be called by any other person or persons.

TENTH:

A. Any purchase by the Corporation directly or indirectly, of shares of Voting Stock (as hereinafter defined) from a 4% Stockholder (as hereinafter defined) at a price per share in excess of the Market Price (as hereinafter defined) at the time of such purchase shall, except as hereinafter expressly provided, require the affirmative vote of the holders of that amount of the Voting Power (as hereinafter defined) equal to the sum of (i) the Voting Power of the shares of Voting Stock of which such 4% Stockholder is the beneficial owner (as hereinafter defined) and (ii) a majority of the Voting Power of the remaining outstanding shares of Voting Stock. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or any agreement with any national securities exchange, or otherwise.

B. The provisions of Section A of this Article TENTH shall not be applicable to (i) any offer to purchase made by the Corporation which is made on the same terms and conditions to all holders of the same class of Voting Stock as those so purchased, (ii) any transaction which may be deemed to be a purchase by the Corporation of Voting Stock which is made in connection with the terms or operation of any stock option or other employee benefit plan now or hereafter maintained by the Corporation, or (iii) any purchase by the Corporation of Voting Stock on the open market and not as a result of a privately negotiated transaction.

C. For purposes of Article TENTH:

1. A "person" shall mean any individual, firm, corporation, partnership, trust or other entity.

2. "Voting Stock" shall mean the outstanding shares of all classes or series of

authorized capital stock of the Corporation entitled to vote generally in the election of directors. The term "Voting Power" shall mean the aggregate of the votes entitled to be cast by the holders of all the then outstanding shares of Voting Stock voting together as a single class.

3. "4% Stockholder" shall mean any person (other than the Corporation or any corporation of which a majority of any class or series of equity security is owned, directly or indirectly, by the Corporation), including any group formed for the purpose of acquiring, holding or voting Voting Stock, who or which is the beneficial owner, directly or indirectly, of at least four percent (4%) of the voting power of the outstanding Voting Stock and became such beneficial owner within two years prior to the date of the purchase referred to in Section A of this Article TENTH or any agreement in respect thereof.

4. A person shall be a "beneficial owner" of any Voting Stock (a) which such person or any of its Affiliates (as hereinafter defined) or Associates (as hereinafter defined) beneficially owns, directly or indirectly; (b) which such person or any of its Affiliates or Associates has or shares, directly or indirectly, (i) the right to acquire (whether such right is exercisable immediately or subject only to the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding; or (c) which is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding voting or disposing of any shares of Capital Voting Stock. For purposes of this Article TENTH, "control" of a security shall include the power to vote or dispose of such security.

5. For purposes of determining whether a person is a 4% Stockholder pursuant to paragraph (c)(iii) of this Article TENTH, the number of shares of Voting Stock deemed to be outstanding

shall include shares deemed owned through application of Section C.4 of this Article TENTH but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

6. "Market Price" shall mean the last closing sale price immediately preceding the time in question of a share of the stock in question on the Composite Tape for New York Stock Exchange Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the American Stock Exchange or on the principal United States Securities Exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such Exchange, the last closing bid quotation with respect to a share of such stock immediately preceding the time in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use (or any other system of reporting or ascertaining quotations then available), or if such stock is not quoted, the fair market value at the time in question of a share of such stock as determined by the Board in good faith.

7. "Disinterested Director" shall mean (a) any member of the Board of Directors of the Corporation (the "Board") who neither is a director or officer of or, has a material equity interest in, the Corporation nor is, the 4% Stockholder referred to in Section A of this Article TENTH and who was a member of the Board more than two years prior to the date of the purchase referred to in Section A of this Article TENTH, and (b) any successor of a Disinterested Director who was not nominated for election as a director by the 4% Stockholder referred to in Section A of this Article TENTH and who is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board.

8. The terms "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 under the Exchange Act as in effect on January 1, 1992 (the term "registrant" in said Rule 12b-2 meaning in this case the Corporation).

D. A majority of the Disinterested Directors of the Corporation shall have the power and the duty to determine for purposes of this Article TENTH, on the basis of information known to them after reasonable inquiry, (i) whether a person is a 4% Stockholder, (ii) the number of shares of Voting Stock beneficially owned by any person, (iii) whether a price is in excess of the Market Price, and (iv) such other matters with respect to which a determination is required under this Article TENTH. The good faith determination of a majority of the Disinterested Directors shall be conclusive and binding for all purposes of this Article TENTH.

KEYNOTE: The Board of Directors of the Corporation, when evaluating any offer of another party to (a) make a tender or exchange offer for any equity security of the Corporation; (b) merge or consolidate the Corporation with another corporation; or (c) purchase or otherwise acquire all or substantially all of the properties and assets of the Corporation may, in connection with the exercise of its judgment in determining what is in the best interests of the Corporation and its stockholders, give due consideration not only to the price or other consideration being offered but also to all other factors the directors deem relevant, including, without limitation (i) the financial and managerial resources and future prospects of the other party; (ii) the character, integrity, business philosophy and financial status of the other party; (iii) the possible effects on the business and long term plans and strategies of the Corporation and its subsidiaries and on the employees, customers, suppliers and creditors of the Corporation and its subsidiaries and the effects on the communities in which the Corporation and its subsidiaries do business; (iv) the general desirability of the continuance of the Corporation as an independent entity; and (v) not only the consideration being offered in relation to the then current market price for the Corporation's outstanding shares of capital stock, but also the Board of Directors' estimate of the future value of the Corporation (including the unrealized value of its properties and assets) as an independent going concern. In giving such consideration to the foregoing factors, the Board of Directors and each

individual director shall be deemed to be performing its duly authorized duties and acting in good faith in the best interests of the Corporation within the meaning of Section 145 of the GCL.

TWELFTH:

A. In addition to any affirmative vote required by law or this Certificate of Incorporation or the Bylaws of the Corporation, and except as otherwise expressly provided in Section B of this Article TWELFTH, a Business Combination (as hereinafter defined) with, or proposed by or on behalf of, an Interested Stockholder (as hereinafter defined) or any Affiliate or Associate (as hereinafter defined) of such Interested Stockholder or any person who thereafter would be an Affiliate or Associate of such Interested Stockholder shall require the affirmative vote of not less than eighty percent (80%) of the Voting Power (as hereinafter defined), excluding that portion of the Voting Power represented by the Voting Stock beneficially owned by such Interested Stockholder. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage or separate class vote may be specified, by law or any agreement with any national securities exchange, or otherwise.

B. The provisions of Section A of this Article TWELFTH shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote, if any, as is required by law or by any other provision of this Certificate of Incorporation or the Bylaws of the Corporation, or any agreement with any national securities exchange, if all of the conditions specified in either of the following Paragraphs 1 or 2 are met or, in the case of a Business Combination not involving the payment of consideration to the holders of the Corporation's outstanding Capital Stock (as hereinafter defined), if the condition specified in the following Paragraph 1 is met:

1. The Business Combination shall have been approved, either specifically or as a transaction which is within an approved category of transactions, by a majority (whether such approval is made prior to or subsequent to the acquisition of beneficial ownership of the Voting Stock that caused the Interested Stockholder to become an Interested Stockholder) of the Continuing Directors (as hereinafter defined).

2. All of the following conditions shall have been met:

(a) The aggregate per share amount of cash and the Fair Market Value (as hereinafter defined), as of the date of the consummation of the Business Combination, of consideration other than cash to be received by holders of Common Stock in such Business Combination shall be at least equal to the highest amount determined under clauses (i) and (ii) below:

(i) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by or on behalf of the Interested Stockholder for any share of Common Stock in connection with the acquisition by the Interested Stockholder of beneficial ownership of shares of Common Stock (x) within the two-year period immediately prior to the first public announcement of the proposed Business Combination (the "Announcement Date") or (y) in the transaction in which it became an Interested Stockholder, whichever is higher, in each case as adjusted for any subsequent stock split, stock dividend, subdivision or reclassification affecting or relating to the Common Stock; and

(ii) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Stockholder became an Interested Stockholder (the "Determination Date"), whichever is higher, in each case as adjusted for any subsequent stock split, stock dividend, subdivision or reclassification affecting or relating to the Common Stock.

(b) The aggregate amount per share of cash and the Fair Market Value, as of the date of the consummation of the Business Combination, of consideration other than cash to be received by holders of shares of any class or series of outstanding Capital Stock, other than Common Stock, shall be at least equal to the highest amount determined under clauses (i), (ii) and (iii) below:

(i) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by or on behalf of the Interested Stockholder for

any share of such class or series of Capital Stock in connection with the acquisition by the Interested Stockholder of beneficial ownership of shares of such class or series of Capital Stock (x) within the two-year period immediately prior to the Announcement Date or (y) in the transaction in which it became an Interested Stockholder, whichever is higher, in each case as adjusted for any subsequent stock split, stock dividend, subdivision or reclassification affecting or relating to such class or series of Capital Stock;

(ii) the Fair Market Value per share of such class or series of Capital Stock on the Announcement Date or on the Determination Date, whichever is higher, in each case as adjusted for any subsequent stock split, stock dividend, subdivision or reclassification affecting or relating to such class or series of Capital Stock; and

(iii) (if applicable) the highest preferential amount per share to which the holders of shares of such class or series of Capital Stock would be entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation regardless of whether the Business Combination to be consummated constitutes such an event.

The provisions of this Paragraph 2 shall be required to be met with respect to every class or series of outstanding Capital Stock, whether or not the Interested Stockholder has previously acquired beneficial ownership of any shares of a particular class or series of Capital Stock.

(c) The consideration to be received by holders of a particular class or series of outstanding Capital Stock shall be in cash or in the same form as previously has been paid by or on behalf of the Interested Stockholder in connection with its direct or indirect acquisition of beneficial ownership of shares of such class or series of Capital Stock. If the consideration so paid for shares of any class or series of Capital Stock varied as to form, the form of consideration for such class or series of Capital Stock shall be either cash or the form used to acquire beneficial ownership of the largest number of shares of such class or series of Capital Stock previously acquired by the Interested Stockholder.

(d) After the Determination Date and prior to the consummation of such Business Combination:

(i) except as approved by a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular dates therefor any full quarterly dividends (whether or not cumulative) payable in accordance with the terms of any outstanding Capital Stock; (ii) there shall have been no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any stock split, stock dividend or subdivision of the Common Stock), except as approved by a majority of the Continuing Directors; (iii) there shall have been an increase in the annual rate of dividends paid on the Common Stock as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction that has the effect of reducing the number of outstanding shares of Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and (iv) such Interested Stockholder shall not have become the beneficial owner of any additional shares of Capital Stock except as part of the transaction that results in such Interested Stockholder becoming an Interested Stockholder and except in a transaction that, after giving effect thereto, would not result in any increase in the Interested Stockholder's percentage beneficial ownership of any class or series of Capital Stock, excluding any increase in such percentage beneficial ownership as a result of action taken solely by the Corporation.

(e) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "Exchange Act") or any subsequent provisions replacing the Exchange Act shall be mailed to all stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to the Exchange Act or subsequent provisions). The proxy or information statement shall contain on the first page thereof, in a prominent place, any statement as to the advisability (or inadvisability) of the Business Combination that the Continuing Directors, or any of them, may choose to make and, if deemed advisable by a majority of the Continuing Directors, the opinion of an investment banking firm selected by a majority of the Continuing Directors as to the fairness (or absence thereof) of the terms of the Business Combination from a financial point of view to the

holders of the outstanding shares of Capital Stock other than the Interested Stockholder and its Affiliates and Associates, such investment banking firm to be paid a reasonable fee for its services by the Corporation.

(f) Such Interested Stockholder shall not have made any major change in the Corporation's business or equity capital structure without the approval of a majority of the Continuing Directors.

C. The following definitions shall apply with respect to this Article TWELFTH:

1. The term "Business Combination" shall mean:

(a) Any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (i) any Interested Stockholder or (ii) any other person (whether or not itself an Interested Stockholder) which is or after such merger or consolidation would be an Affiliate or Associate of an Interested Stockholder; or

(b) any direct or indirect sale, lease, exchange, mortgage, pledge, transfer or other disposition or security arrangement, investment, loan, advance, guarantee, agreement to purchase, agreement to pay, extension of credit or joint venture participation (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, between the Corporation or any Subsidiary and any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder involving any assets, securities, obligations or commitments of the Corporation, any Subsidiary or any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder that has aggregate Fair Market Value and/or involves aggregate commitments of \$5,000,000 or more or constitutes more than five percent (5%) of the book value of the total assets (in the case of transactions involving assets or commitments other than capital stock) or five percent (5%) of the stockholders' equity (in the case of transactions in capital stock) of the entity in question (the "Substantial Part"), as reflected in the most recent fiscal year-end consolidated balance sheet of such entity existing at the time the stockholders of the Corporation would be required to approve or authorize the Business Combination involving the assets, securities, obligations and/or commitments constituting any Substantial Part; provided that any arrangement, whether as employee, consultant or otherwise, other than as a director, pursuant

to which any Interested Stockholder or any Affiliate or Associate thereof shall, directly or indirectly, have any control over or management of any aspect of the business or affairs of the Corporation, shall be deemed to be a "Business Combination" irrespective of the value test set forth above; or

(c) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation or for any amendment to the Corporation's Bylaws; or

(d) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or otherwise involving an Interested Stockholder) that has the effect, directly or indirectly, of increasing the proportionate share of any class or series of Capital Stock, or any securities convertible into Capital Stock or into equity securities of any Subsidiary, that is beneficially owned by any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder, except as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by an Interested Stockholder or any Affiliate or Associate of an Interested Stockholder; or

(e) any agreement, contract or other arrangement providing for any one or more of the actions specified in the foregoing paragraphs (a) through (d).

2. The term "Capital Stock" shall mean all capital stock of the Corporation authorized to be issued from time to time under Article FOURTH of this Certificate of Incorporation, and the term "Voting Stock" shall mean all Capital Stock which may be voted on all matters submitted to stockholders of the Corporation generally. The term "Voting Power" shall mean the aggregate of the votes entitled to be cast by the holders of all the then outstanding shares of Voting Stock voting together as a single class.

3. The term "person" shall mean any individual, firm, company or other entity and shall include any group comprised of any person and any other person with whom such person or any Affiliate or Associate of such person has any agreement, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of Capital Stock.

4. The term "Interested Stockholder" shall mean any person (other than the Corporation or any Subsidiary and other than any profit-sharing, employee stock ownership or other employee benefit plan of the Corporation or any Subsidiary or any trustee of or fiduciary with respect to any such plan when acting in such capacity or any trust established by the Corporation or any Subsidiary in respect of any such plan) who (a) is the beneficial owner of Voting Stock representing five percent (5%) or more of the votes entitled to be cast by the holders of all then outstanding shares of Voting Stock; or (b) is an Affiliate or Associate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner of Voting Stock representing five percent (5%) or more of the votes entitled to be cast by the holders of all then outstanding shares of Voting Stock.

5. A person shall be a "beneficial owner" of any Capital Stock (a) which such person or any of its Affiliates or Associates beneficially owns, directly or indirectly; (b) which such person or any of its Affiliates or Associates has or shares, directly or indirectly, (i) the right to acquire (whether such right is exercisable immediately or subject only to the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding; or (c) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Capital Stock. For the purposes of determining whether a person is an Interested Stockholder pursuant to Paragraph 4 of this Section C, the number of shares of Capital Stock deemed to be outstanding shall include shares deemed beneficially owned by such person through application of this Paragraph 5 of Section C, but shall not include any other shares of Capital Stock that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

6. The terms "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 under the Exchange Act as in effect on January 1, 1992 (the term "registrant" in said Rule 12b-2 meaning in this case the Corporation).

7. The term "Subsidiary" means any company of which a majority of any class of equity security is beneficially owned by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in Paragraph 4 of this Section C, the term "Subsidiary" shall mean only a company of which a majority of each class of equity security is beneficially owned by the Corporation.

8. The term "Continuing Director" means (i) a director originally elected by the initial Director upon the incorporation of the Corporation, or (ii) any member of the Board of Directors of the Corporation (the "Board of Directors"), while such person is a member of the Board of Directors, who is not an Interested Stockholder or an Affiliate or Associate or representative of the Interested Stockholder and was a member of the Board of Directors prior to the time that the Interested Stockholder became an Interested Stockholder, and (iii) any person who subsequently becomes a member of the Board of Directors, while such person is a member of the Board of Directors, who is not an Interested Stockholder or an Affiliate or Associate or representative of the Interested Stockholder, if such person's nomination for election or election to the Board of Directors is recommended or approved by a majority of the Continuing Directors then in office.

9. The term "Fair Market Value" means (a) in the case of cash, the amount of such cash; (b) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the American Stock Exchange or on the principal United States securities exchange registered under the Exchange Act on which such stock is listed, or, if such stock is not listed on any such exchange, (i) the closing price with respect to a share of such stock on the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation System during the 30-day period preceding the date in question, or (ii) if such stock is not quoted on such National Market System, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any similar system then in use, or (iii) if no such quotations are available, the fair market value on the

date in question of a share of such stock as determined by a majority of the Continuing Directors in good faith; and (c) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined in good faith by a majority of the Continuing Directors.

10. In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in Paragraphs 2.a and 2.b of Section B of this Article TWELFTH shall include the shares of Common Stock and/or the shares of any other class or series of Capital Stock retained by the holders of such shares.

11. The term "Determination Date" shall mean the date on which the Interested Stockholder becomes an Interested Stockholder.

D. A majority of the Continuing Directors shall have the power and duty to determine for the purposes of this Article TWELFTH, on the basis of information known to them after reasonable inquiry, all questions arising under this Article TWELFTH, including, without limitation, (a) whether a person is an Interested Stockholder, (b) the number of shares of Capital Stock or other securities beneficially owned by any person, (c) whether a person is an Affiliate or Associate of another, (d) whether a Proposed Action (as hereinafter defined) is with, or proposed by, or on behalf of an Interested Stockholder or an Affiliate or Associate of an Interested Stockholder, (e) whether the assets that are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of \$5,000,000 or more, (f) whether the assets or securities that are the subject of any Business Combination constitute a Substantial Part, and (g) to what extent an adjustment is appropriate (including an adjustment to Paragraph 2 of Section B of this Article TWELFTH) in respect of any provision contained within this Article TWELFTH as a result of a merger, consolidation, stock split, stock dividend, extraordinary cash dividend, subdivision, reclassification, recapitalization or similar transaction. Any such determination made in good faith shall be binding and conclusive on all parties. For purposes of this Article TWELFTH (including without limitation Paragraph 2 of Section B and subparagraph (g) of this Section D of this Article TWELFTH), the term "Corporation" including, without

limitation, any reference to any shares of capital stock of the Corporation or the holders or prices or value of such shares, shall be deemed to include any predecessor corporation and the corresponding shares of capital stock of such predecessor corporation and the holders and prices and value of such shares.

E. Nothing contained in this Article TWELFTH shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

F. The fact that any Business Combination complies with the provisions of Section B of this Article TWELFTH shall not be construed to impose any fiduciary duty, obligation or responsibility, on the Board of Directors, or any member thereof, to approve such Business Combination or recommend its adoption or approval to the stockholders of the Corporation, nor shall such compliance limit, prohibit or otherwise restrict in any manner the Board of Directors, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such Business Combination.

G. For the purposes of this Article TWELFTH, a Business Combination or any proposal to amend, repeal or adopt any provision of this Certificate of Incorporation inconsistent with this Article TWELFTH (collectively, "Proposed Action") is presumed to have been proposed by, or on behalf of, an Interested Stockholder or an Affiliate or Associate of an Interested Stockholder or a person who thereafter would become such if (a) after the Interested Stockholder became such, the Proposed Action is proposed following the election of any director of the Corporation who with respect to such Interested Stockholder, would not qualify to serve as a Continuing Director, or (b) such Interested Stockholder, Affiliate, Associate or person votes for or consents to the adoption of any such Proposed Action, unless as to such Interested Stockholder, Affiliate, Associate or person a majority of the Continuing Directors makes a good faith determination that such Proposed Action is not proposed by or on behalf of such Interested Stockholder, Affiliate, Associate or person, based on information known to them after reasonable inquiry.

H. Notwithstanding any other provisions of this Certificate of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage or separate class vote may be specified by law, this Certificate of Incorporation or the Bylaws of the

Corporation), any proposal to amend, repeal or adopt any provision of this Certificate of Incorporation inconsistent with this Article TWELFTH which is proposed by or on behalf of an Interested Stockholder or an Affiliate or Associate of an Interested Stockholder shall require the affirmative vote of the holders of not less than eighty percent (80%) of the votes entitled to be cast by the holders of all the then outstanding shares of Voting Stock, voting together as a single class, excluding Voting Stock beneficially owned by such Interested Stockholder or any Affiliate or Associate of such Interested Stockholder; provided, however, that this Section H shall not apply to, and such eighty percent (80%) vote shall not be required for, any amendment, repeal or adoption unanimously recommended and approved by the Board of Directors if all of such directors are persons who would be eligible to serve as Continuing Directors within the meaning of Section C, Paragraph 8 of this Article TWELFTH.

THIRTEENTH:

A. Amendment of Certificate of Incorporation

Notwithstanding anything contained in this Certificate of Incorporation or the By-laws of the Corporation to the contrary (and in addition to any other vote that may be required by law, this Certificate of Incorporation or the Bylaws), Article SIXTH, Article NINTH, Article TENTH, Article ELEVENTH, Article TWELFTH, and this Article THIRTEENTH hereof shall not be altered, amended or repealed, and no provision inconsistent therewith or in limitation thereof shall be adopted, without the affirmative vote of the holders of at least eighty percent (80%) of the Voting Power of the Corporation, as defined in Article TWELFTH, Section C.2. The Corporation reserves the right to adopt, repeal, rescind, alter or amend in any respect any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by this Certificate of Incorporation or by law, and all rights conferred on stockholders herein are granted subject to this reservation.

B. Amendments to Bylaws

Any Bylaws made by the directors under the powers conferred hereby may be altered, amended or repealed by the directors or by the stockholders, provided that the Bylaws shall not be altered, amended or repealed, and no provision inconsistent therewith or in limitation thereof shall be adopted, by the stockholders without the affirmative vote of

the holders of at least eighty percent (80%) of the Voting Power of the Corporation, as defined in Article TWELFTH, Section C.2.

The undersigned certify that they are the Chairman of the Board and Secretary, respectively, of the Corporation, and for the purpose of amending and restating the Certificate of Incorporation of the Corporation heretofore filed with the Secretary of State of the State of Delaware, do hereby sign this Restated Certificate of Incorporation on the ____ day of _____, 1992.

Michael R. O'Brien
Chairman of the Board

ATTEST:

Joseph P. Proctor, Secretary