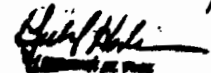


**FILED**

JUN 30 1987

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**RESTATED CERTIFICATE OF INCORPORATION  
OF  
FILENET CORPORATION**

The undersigned, Theodore J. Smith and Mark S. St. Clere, certify that they are the President and the Assistant Secretary, respectively, of FileNet Corporation, a corporation organized and existing under the laws of the State of Delaware (the "corporation"), and do hereby further certify as follows:

1. The name of the corporation is FileNet Corporation.
2. The name under which the corporation was originally incorporated is FileNet Corporation.
3. The original Certificate of Incorporation of the corporation was filed in the Office of the Secretary of State of the State of Delaware on April 1, 1987.
4. This Restated Certificate of Incorporation was duly adopted by the Board of Directors of the corporation on June 24, 1987 without a vote of the stockholders of the corporation in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware.
5. This Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the Certificate of Incorporation as heretofore amended or supplemented and there is no discrepancy between those provisions and the provisions of this Restated Certificate of Incorporation.

The text of the Certificate of Incorporation of the corporation is restated to read in its entirety as follows:

**FIRST:** The name of the corporation is FileNet Corporation (hereinafter sometimes referred to as "the corporation").

**SECOND:** The address of the registered office of the corporation in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle. The name of the 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 a corporation may be organized under the General Corporation Law of Delaware.

**FOURTH:**

A. This corporation is authorized to issue two classes of shares designated respectively "Common Stock" and "Preferred Stock," and referred to herein either as Common Stock or Common shares and Preferred Stock or Preferred shares, respectively. The Common Stock shall have a par value of \$.01 per share and the Preferred Stock shall have a par value of \$.10 per share. The number of shares of Common Stock is Twenty-Five Million (25,000,000), par value One Cent (\$.01) and the number of shares of Preferred Stock is Six Million Nine Hundred Forty-Five Thousand Nine Hundred Twenty-Nine (6,945,929), par value Ten Cents (\$.10).

B. The Preferred shares may be issued from time to time in one or more series. Except for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, the Board of Directors is authorized to fix the number of shares of any series of Preferred shares, to determine the designation of any such series, to determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued series of Preferred shares and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding), the number of shares of any such series subsequent to the issue of shares of that series.

C. The rights, preferences, restrictions and other matters relating to Six Million Nine Hundred Forty-Five Thousand Nine Hundred Twenty-Nine (6,945,929) shares of Preferred Stock are as follows:

Section 1. Designation and Number of Shares. Two million (2,000,000) shares of Preferred Stock shall be designated and known as the "Series A Preferred Stock" (hereinafter referred to as the "Series A Preferred Stock"), One Million Nine Hundred Fifty-Nine Thousand Two Hundred Thirty-Three (1,959,233) shares of Preferred Stock shall be designated and known as the "Series B Preferred Stock" (hereinafter referred to as the "Series B Preferred Stock"), One Million Nine Hundred Eight-Six Thousand Six Hundred

Ninety-six (1,986,696) shares of Preferred Stock shall be designated and known as the "Series C Preferred Stock" (hereinafter referred to as the "Series C Preferred Stock") and One Million (1,000,000) shares of Preferred Stock shall be designated and known as the "Series D Preferred Stock" (hereinafter referred to as the "Series D Preferred Stock"). Each share of a series shall be identical in all respects to every other share of that series.

Section 1A. Definitions. For purposes of this Article the following definitions shall apply:

A. 'Board of Directors' or 'Board' shall mean the Board of Directors of this corporation.

B. 'Junior Shares' shall mean all Common and any other shares of this corporation other than shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock.

C. 'Subsidiary' shall mean any corporation at least 50% of whose outstanding voting shares shall at the time be owned directly or indirectly by this corporation or by one or more subsidiaries, or by this corporation and one or more subsidiaries.

D. 'Preferred Stock' shall collectively refer to the corporation's Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock or to any such series, unless context or classification clearly requires to the contrary.

Section 2. Dividend Rights of Preferred Stock. The holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be entitled to receive, out of any funds legally available therefor, dividends, payable in preference and priority to any payment of any dividend on Junior Shares and in an amount per share of up to \$.20 annually, \$.65 annually, \$.70 annually and \$1.125 annually, respectively, before any such funds are applied to the payment of dividends on Junior Shares, and then after an amount of \$.20 per share has been paid on all Junior Shares, in an amount per share equal to any such further dividend on Junior Shares, all such amounts to be payable only when and as declared by the Board. Such dividends shall not be cumulative and no right shall accrue to the holders of Preferred Stock by reason of the Board's failure to pay or declare such dividends. No dividend shall be paid on or declared and set apart for

the shares of any series of Preferred Stock for any annual dividend period unless at the same time a like proportionate dividend for the same annual dividend period, ratably in proportion to the respective annual dividend rates fixed therefor, shall be paid on or declared and set apart for the shares of all other such series of Preferred Stock.

The per share dividend preferences to be paid to the holders of Preferred Stock hereunder shall be subject to equitable adjustment by a resolution of the Board of Directors to reflect any stock splits, stock combinations, stock subdivisions or preferred stock dividends with respect to any series of the Preferred Stock.

**Section 3. Liquidation Rights of Preferred Stock.**

In the event of a liquidation or winding up of this corporation, the holders of each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be entitled to receive, pro rata, a preferential amount equal to Two Dollars (\$2.00) per share, Six Dollars and Fifty Cents (\$6.50) per share, Seven Dollars (\$7.00) per share and Eleven Dollars and Twenty-Five Cents (\$11.25) per share, respectively, before any amount shall be paid to the holders of Junior Shares. In the event that the assets of the corporation are insufficient to permit full payment to the Preferred Stock stockholders as herein provided, then such assets shall be distributed ratably among the holders of the outstanding Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive. After the payment or the setting apart of payment to the holders of Preferred Stock of the preferential amounts so payable to them, the holders of Junior Shares which are Common Stock of the corporation shall be entitled to receive \$.10 per share, and then the holders of Preferred Stock and the holders of Junior Shares shall be entitled to receive, ratably share for share without distinction as to class, all remaining assets of this corporation.

For purposes of this Section 3, a liquidation shall not be deemed to be occasioned by, or to include, this corporation's sale of all or substantially all of its assets or the acquisition of this corporation by another entity by way of merger or consolidation resulting in the exchange of the outstanding shares of this corporation for securities or consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary.

The per share liquidation preferences to be paid to the holders of Preferred Stock hereunder shall be subject to equitable adjustment by a resolution of the Board of Directors to reflect any stock splits, stock combinations, stock subdivisions or preferred stock dividends with respect to any series of the Preferred Stock.

Section 4. Redemption.

(a) On February 14, 1993 and on each February 14th thereafter and including February 14, 1997, 400,000 shares of the Series A Preferred Stock, 391,847 shares of the Series B Preferred Stock, 397,340 shares of the Series C Preferred Stock and 156,467 shares of the Series D Preferred Stock shall be redeemed, through the operation of the sinking fund as hereinafter set forth. Notwithstanding the preceding sentence, the date for redemption of any series of the Preferred Stock may be modified if the holders of at least 60% (sixty percent) of the outstanding shares of such series of the Preferred Stock consent thereto in writing at least 15 days prior to the scheduled date of redemption. The redemption price for each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock repurchased pursuant to this Section 4 shall be \$2.00 per share, \$6.50 per share, \$7.00 per share and \$11.25 per share, respectively (the "Redemption Price").

(b) In case of any redemption of a part only of the outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, the corporation shall effect such redemption ratably according to the number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock then held by each holder of the then outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock.

(c) At least 60 days prior to the date fixed for any redemption of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock (the "Redemption Date"), a written notice shall be mailed to each holder of record of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock to be redeemed, postage prepaid, addressed to such holder at his post office address as shown on the records of the corporation, notifying such holder of the obligation of the corporation to redeem such shares,

stating the Redemption Date and the date on which such holder's Conversion Rights as to such shares terminate and calling upon such holder to surrender to the corporation at the place designated his certificate or certificates representing the shares to be redeemed (the "Redemption Notice").

Each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock to be redeemed shall present and surrender his certificate or certificates representing such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock to the corporation at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to or on the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. From and after the Redemption Date unless default is made in the payment of the Redemption Price, all rights of the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock as stockholders of the corporation, except the right to receive the Redemption Price, shall cease and terminate, and such shares shall not thereafter be transferred on the books of the corporation or be deemed to be outstanding for any purposes whatsoever.

(d) Beginning on the business day which next precedes February 14, 1993, and on or before the business day which next precedes the 14th day of February each year thereafter to and including February 14, 1997 (each such first business day which next precedes the 14th day of February being hereinafter referred to as a "Sinking Fund Payment Date"), the corporation shall pay to a bank or trust company having aggregate capital, surplus and net profits in excess of \$250,000,000 an amount equal to \$7,888,640 out of moneys legally available therefor. If on any Sinking Fund Payment Date the funds legally available shall be insufficient to discharge the sinking fund requirements in full, then all funds to the extent legally available therefor shall be set aside for the sinking fund.

(e) The sinking fund requirements as herein provided shall be cumulative so that if they are not fully discharged as they accrue, the funds legally available for such purposes for each subsequent fiscal year shall be applied to such fund until the requirements thereof are fully discharged.

(f) On or before the ninetieth (90th) day following each Sinking Fund Payment Date, the cash in the sinking fund shall be used to acquire the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, by redemption in the manner provided in this Section 4, at the Redemption Price. On retirement of all redeemable shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, any cash remaining in the sinking fund shall become a part of the general funds of the corporation.

(g) The Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock may not be redeemed except as provided in this Section 4 or in Section 7 below.

Section 5. Conversion. The holders of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the corporation or any transfer agent for the Preferred Stock or Common Stock, into fully paid and nonassessable shares of Common Stock at the Conversion Price (as hereinafter defined) in effect at the time of conversion, determined as hereinafter provided and upon the terms hereinafter set forth.

In the event of a Redemption Notice with respect to the redemption of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock pursuant to Section 4 hereof, the Conversion Rights shall terminate as to the number of shares designated for redemption at the close of business on the fifth (5th) day preceding the redemption date, unless default is made in payment of the Redemption Price, in which case the Conversion Rights for such shares shall continue.

(b) Automatic Conversion.

(1) Each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock

and Series D Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price immediately 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 at the equivalent public offering price of at least \$12.00 per share of Common Stock appropriately adjusted for subdivisions and combinations of Common Stock and dividends on Common Stock payable in shares of Common Stock and resulting in the receipt by the corporation of at least \$5,000,000 of net proceeds (after applicable discounts, commissions and expenses).

(ii) In the event of such an offering, the person(s) entitled to receive the Common Stock issuable upon such automatic conversion of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock shall not be deemed to have converted such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock until immediately prior to the closing of such sale of securities. Upon the occurrence of such an offering the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock shall be converted automatically without further action by the holders of said shares and whether or not the certificates representing said shares are surrendered to the corporation or its transfer agent; provided, however, the corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon conversion of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock unless certificates evidencing such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock are either delivered to the corporation or any transfer agent as hereinafter provided, or the holder notifies the corporation that said certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the corporation to indemnify the corporation against any loss incurred by it in connection therewith. Upon the occurrence of the automatic conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock shall surrender the certificates representing said shares at the office of the corporation or of any transfer agent for the Preferred



Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder, promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock surrendered were convertible on the date on which the event effecting the automatic conversion occurred.

(c) Conversion Price. The Series A Preferred Stock shall be convertible into the number of shares of Common Stock which result from dividing the Conversion Price for the Series A Preferred Stock (as hereinafter defined) in effect at the time of conversion into Two Dollars (\$2.00) for each share of Series A Preferred Stock being converted. The Series B Preferred Stock shall be convertible into the number of shares of Common Stock which result from dividing the Conversion Price for the Series B Preferred Stock (as hereinafter defined) in effect at the time of conversion into Six Dollars and Fifty Cents (\$6.50) for each share of Series B Preferred Stock being converted. The Series C Preferred Stock shall be convertible into the number of shares of Common Stock which result from dividing the Conversion Price for the Series C Preferred Stock (as hereinafter defined) in effect at the time of conversion into Seven Dollars (\$7.00) for each share of Series C Preferred Stock being converted. The Series D Preferred Stock shall be convertible into the number of shares of Common Stock which result from dividing the Conversion Price for the Series D Preferred Stock (as hereinafter defined) in effect at the time of conversion into Eleven Dollars and Twenty-Five Cents (\$11.25) for each share of Series D Preferred Stock being converted. The price at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock (the "Conversion Prices") shall initially be Two Dollars (\$2.00) per share, Six Dollars and Fifty Cents (\$6.50) per share, Seven Dollars (\$7.00) per share and Eleven Dollars and Twenty-Five Cents (\$11.25) per share, respectively. Such initial Conversion Prices shall be subject to adjustment as provided herein.

(d) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be

entitled, the corporation shall pay cash in the amount equal to such fraction multiplied by the then effective Conversion Price. Before any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D 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 or Common 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 Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D 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. Except as set forth in Section 5(b) above, 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 Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act of 1933, the conversion may be conditioned upon the closing of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock shall not be deemed to have converted such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock until immediately prior to the closing of such sale of securities.

(e) Adjustment for Combinations or Consolidations of Common Stock.

In the event the corporation at any time or from time to time after the initial sale of the Series D Preferred Stock (hereinafter referred to as the "Original Issue Date") effects a subdivision, combination or other reclassification of its outstanding Common Stock into a

greater or lesser number of shares without a proportionate and corresponding subdivision or combination of its outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, then and in each such event the applicable Conversion Price shall be decreased or increased proportionately.

(f) Adjustment for Dividend, Distributions and Common Stock Equivalents.

In the event the corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock, or other securities or rights (hereinafter referred to as "Common Stock Equivalents") convertible into or entitling the holder thereof to receive additional shares of Common Stock without payment of any consideration by such holder for such Common Stock, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents shall be deemed to be issued and outstanding as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date. In each such event the applicable Conversion Price for each series of the Preferred Stock shall be reduced as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding or deemed to be issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding or deemed to be issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such divi-

dend or distribution or upon conversion or exercise of such Common Stock Equivalents;

provided, however, (A) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Conversion Price shall be adjusted pursuant to this Section 5(f) as of the time of actual payment of such dividends or distributions; (B) if such Common Stock Equivalents provide, with the passage of time or otherwise, for any decrease in the number of shares of Common Stock issuable upon conversion or exercise thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, the applicable Conversion Price shall, upon any such decrease becoming effective, be recomputed to reflect such decrease insofar as it affects the rights of conversion or exercise of the Common Stock Equivalents then outstanding; (C) upon the expiration of any rights of conversion or exercise under any unexercised Common Stock Equivalents, the applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall upon such expiration, be recomputed as if the only additional shares of Common Stock issued were the shares of such stock, if any, actually issued upon the conversion or exercise of such Common Stock Equivalents; and (D) in the case of Common Stock Equivalents which expire by their terms not more than sixty (60) days after the date of issuance thereof, no adjustment in the applicable Conversion Price shall be made until the expiration or exercise of all such Common Stock Equivalents, whereupon such adjustment shall be made in the manner provided in clause (C) above.

(g) Adjustment of Conversion Price for Diluting Issues. Except as otherwise provided in this subparagraph (g), in the event the corporation sells or issues any Common Stock or Common Stock Equivalents at a per share consideration (as defined below) less than the Conversion Price for a series of Preferred Stock then in effect, then the Conversion Price then in effect for such series shall be adjusted as provided in subparagraphs (i), (ii) and (iii) hereof. This subparagraph 5(g) shall be applied separately to the Conversion Prices of each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock. For the purposes of the foregoing, the per share consideration with respect to the sale

or issuance of Common Stock shall be the price per share received by the corporation, prior to the payment of any expenses, commissions, discounts and other applicable costs. With respect to the sale or issuance of Common Stock Equivalents which are convertible into or exchangeable for Common Stock without further consideration, the per share consideration shall be determined by dividing the maximum number of shares of Common Stock issuable with respect to such Common Stock Equivalents (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) into the aggregate consideration received by the corporation upon the sale or issuance of such Common Stock Equivalents. With respect to the issuance of other Common Stock Equivalents, the per share consideration shall be determined by dividing the maximum number of shares of Common Stock issuable with respect to such Common Stock Equivalents into the total aggregate consideration received by the corporation upon the sale or issuance of such Common Stock Equivalents plus the minimum aggregate amount of additional consideration receivable by the corporation upon the conversion or exercise of such Common Stock Equivalents. The issuance of Common Stock or Common Stock Equivalents for no consideration shall be deemed to be an issuance at a per share consideration of \$.01. In connection with the sale or issuance of Common Stock and/or Common Stock Equivalents for non-cash consideration, the amount of consideration shall be determined by the Board of Directors of the corporation.

As used herein, "Additional Shares of Common Stock" shall mean either shares of Common Stock issued subsequent to the Original Issue Date or, with respect to the issuance of Common Stock Equivalents, the maximum number of shares of Common Stock issuable in exchange for, upon conversion of, or upon exercise of such Common Stock Equivalents.

(i) Upon each issuance of Additional Shares of Common Stock for a per share consideration less than the Conversion Price for a series of Preferred Stock in effect on the date of such issuance, the Conversion Price for such series in effect on such date will be adjusted by multiplying it by a fraction:

(x) the numerator of which shall be the number of shares of Common Stock outstanding or deemed to be outstanding immediately prior to the issuance of such Additional Shares of Common Stock plus the number of shares of Common

Stock which the aggregate net consideration received by the corporation for the total number of such Additional Shares of Common Stock so issued would purchase at the Conversion Price then in effect, and

(y) the denominator of which shall be the number of shares of Common Stock outstanding or deemed to be outstanding immediately prior to the issuance of such Additional Shares of Common Stock, plus the number of such Additional Shares of Common Stock so issued.

(ii) Upon each issuance of Common Stock Equivalents, exchangeable without further consideration into Common Stock, for a per share consideration less than the Conversion Price for a series of Preferred Stock in effect on the date of such issuance, the Conversion Price for such series in effect on such date will be adjusted as in subparagraph (i) immediately above on the basis that the related Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of the Common Stock Equivalents, and the aggregate consideration received by the corporation for such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(iii) Upon each issuance of Common Stock Equivalents other than those described in subparagraph (ii) above, for a per share consideration less than the Conversion Price in effect on the date of such issuance, the Conversion Price for such series in effect on such date will be adjusted as in subparagraph (i) above on the basis that the related Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of such Common Stock Equivalents, and the aggregate consideration received and that receivable by the corporation on conversion or exercise of such Common Stock Equivalents shall be deemed to have been received for such Additional Shares.

(iv) Once any Additional Shares of Common Stock have been treated as having been issued for the purpose of this Section 5(g), they shall be treated as issued and outstanding shares of Common Stock whenever any subsequent calculations must be made pursuant hereto; provided that on the expiration of any options, warrants or rights to purchase Additional Shares of Common Stock, the termination of any rights to convert or exchange for Additional Shares of Common Stock, or the expiration of any

options or rights related to such convertible or exchangeable securities on account of which an adjustment in the Conversion Price has been made previously pursuant to this Section 5(g), the Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment made upon the issuance of such options, rights, securities or options or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(v) The foregoing notwithstanding, no adjustment of the Conversion Price shall be made as a result of the issuance of:

-- any shares of Common Stock or any options to purchase shares of Common Stock issued or issuable to employees of the corporation pursuant to a stock option or stock purchase plan adopted by the Board of Directors and approved by the stockholders of the corporation;

-- any shares of Common Stock pursuant to which the Conversion Price is adjusted under (e) or (f) of this Section 5;

-- any shares of Common Stock pursuant to the exchange, conversion, or exercise of any Common Stock Equivalents which have previously been incorporated into computations hereunder on the date when such Common Stock Equivalents were issued; or

-- any shares of Common Stock issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock.

(h) Minimum Amount of Adjustment. No adjustment in the Conversion Price need be made if such adjustment would result in a change in the Conversion Price of less than \$.01. Any adjustment of less than \$.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$.01 or more in the Conversion Price.

(i) No Impairment. The corporation will not, by amendment of its articles of incorporation 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 5 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 the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock pursuant to this Section 5, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such series of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D 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 Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, furnish or cause to be furnished to such holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock.

(k) Notices of Record Date. In the event of any taking by the corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any Common Stock Equivalents or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the corporation shall mail to each holder of Series A



Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the amount and character of such dividend, distribution or right.

(l) Reservation of Stock Issuable Upon Conversion. The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to affect the conversion of all outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, the corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(m) Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the corporation.

Section 6. Voting Rights. Except as otherwise required by law, the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock and the holders of the Common Stock shall be entitled to notice of any stockholders' meeting and to vote upon the election of directors or upon any matter submitted to a stockholder for a vote, on the following basis:

(a) Each share of Common Stock issued and outstanding shall have one vote, and

(b) Each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock issued and outstanding shall have that number of votes equal to the number of full shares of Common Stock into which each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock is convertible.

Except as otherwise expressly provided herein or as required by law, the holders of shares of Preferred Stock shall vote together and not as separate classes.

Section 7. Merger.

(a) It shall be a condition precedent to any

(i) merger of the corporation or any other corporate reorganization in which the corporation or a wholly-owned subsidiary of the corporation shall not be the continuing or surviving entity of such merger or reorganization, or

(ii) sale of all or substantially all of the assets of the corporation that the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock shall be paid in cash, at the closing of any such transaction, an amount equal to \$2.00 per share, \$6.50 per share, \$7.00 per share and \$11.25 per share, respectively. Such payment shall be made, at the option of the corporation, by redemption of all such shares pursuant to Section 4 hereof, if legally permissible (provided that in such event the date of closing of such transaction shall, for purposes of this subparagraph, be deemed to be the "Redemption Date") or by purchase of such shares by the surviving corporation, entity or person or by a third party.

(b) In the event the full amount of such payment is not placed on deposit with a bank or trust company, in accordance with Section 4(d) hereof, at least three (3) days prior to such closing, to be held in escrow for delivery to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock upon the closing of such transaction (or to be returned to the depositor in the event such transaction is not closed), the corporation shall forthwith either:

(i) cause such closing to be postponed until such time as the requirements of this Section 7 have been complied with, or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 7(c) hereof.

(c) The corporation shall give each holder of record of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock written notice of such impending transaction not later than sixty (60) days prior to the stockholders' meeting called to approve such transaction or sixty (60) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of said notices shall describe the material terms and conditions of the contemplated transaction, as well as the terms and conditions of this Section 7, and the corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than sixty (60) days after the mailing by the corporation of the first notice provided for herein or sooner than twenty (20) days after the mailing by the corporation of any notice of material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of not less than sixty percent (60%) of the then outstanding Preferred Stock.

**Section 8. Covenants.** So long as any Preferred Stock shall be outstanding, this corporation shall not, without first obtaining the affirmative vote or written consent of not less than sixty percent (60%) of such outstanding shares of Preferred Stock:

(a) amend or repeal any provision of, or add any provision to, this corporation's Certificate of Incorporation or Bylaws if such action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any series of Preferred Stock;

(b) authorize, create or issue shares of any class of stock having any preference or priority as to divi-

dends or assets superior to or on a parity with any such preference or priority of any series of the Preferred Stock, or authorize, create or issue shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of this corporation having any preference or priority as to dividends or assets superior to or on a parity with any such preferences or priority of any series of the Preferred Stock;

(c) reclassify any Junior Shares 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 any series of the Preferred Stock;

(d) pay or declare any dividend on any Junior Shares or apply any of its assets to the redemption, retirement, purchase or other acquisition directly or indirectly, through subsidiaries or otherwise, of any Junior Shares, except from employees of this corporation upon termination of employment.

Section 9. Residual Rights. All rights accruing to the outstanding shares of this corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

FIFTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the corporation, and for further definition, limitation and regulation of the powers of the corporation and of its directors and stockholders:

A. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by Statute or by this Certificate of Incorporation or the Bylaws of the corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the corporation.

B. The directors of the corporation need not be elected by written ballot unless the Bylaws so provide.

C. 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 stockholders of the

corporation and may not be affected by any consent in writing by such stockholders.

D. Annual and special meetings of stockholders of the corporation may be called by the Board of Directors pursuant to a resolution adopted by one-third of the directors then in office or by the chief executive officer.

SIXTH: The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the corporation. Any adoption, amendment or repeal of Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any resolution providing for adoption, amendment or repeal is presented to the Board). The stockholders shall also have power to adopt, amend or repeal the Bylaws of the corporation.

SEVENTH: A director of this corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the 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 law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

Any repeal or modification of the foregoing provisions of this Article SEVENTH by the stockholders of the corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

EIGHTH: The Board of Directors of the corporation, when evaluating any offer of another party, to make a tender or exchange offer for any shares of the capital stock of the corporation entitled to vote generally in the election of directors (hereinafter referred to as the "Voting Stock") or to consummate any merger, consolidation, sale of all or substantially all of the assets of the corporation, liquidation or dissolution of the corporation, shall, in connection with the exercise of its judgment in determining what is in the best interests of the corporation as a whole, be authorized to give due consideration to such factors as the Board determines to be relevant, including, without limitation:

(i) the interests of the corporation's stockholders;

(ii) whether the proposed transaction might violate federal or state laws;

(iii) not only the consideration being offered in the proposed transaction, in relation to the then current market price for the outstanding capital stock of the corporation, but also the market price for the capital stock of the corporation over a period of years, the estimated price that might be achieved in a negotiated sale of the corporation as a whole or in part or through orderly liquidation, the premiums over market price for the securities of other corporations in similar transactions, current political, economic and other factors bearing on securities prices and the corporation's financial condition and future prospects; and

(iv) the social, legal and economic effects upon employees, suppliers, customers and others having similar relationships with the corporation, and the communities in which the corporation conducts its business.

In connection with any such evaluation, the Board is authorized to conduct such investigations and to engage in such legal proceedings as the Board may determine.

NINTH: The corporation reserves the right to amend or repeal any provision contained in this Restated Restated Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation.