



*MR* 12-21-98

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original documents or copy thereof.

To the Honorable Commission

1. Name of conveying party(ies):

Ex Machina, Inc.

- Individual(s)
- General Partnership
- Corporation-State - New York
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: April 25, 1997

Name and address of receiving party(ies)

Name: AirMedia, Inc.

Internal Address: 16th Floor

Street Address: 11 East 26th Street

City: New York State: NY ZIP: 10010

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State New York
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

OPR/FINANCE  
DEC 21 PM 4 00

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)  
75/144,569

B. Trademark Registration No.(s)

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: John M. Cone

Internal Address: Akin, Gump, Strauss, Hauer & Feld, L.L.P.

Street Address: P. O. Box 688

City: Dallas State: TX ZIP: 75313-0688

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

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DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

John M. Cone  
Name of Person Signing

*John M. Cone*  
Signature

12/15/98  
Date

Total number of pages including cover sheet, attachments, and document:

#184961

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

State of New York }  
Department of State } <sup>ss:</sup>

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

APR 25 1997



A handwritten signature in cursive script, appearing to read "J. Clark", followed by a horizontal line extending to the right.

*Special Deputy Secretary of State*

DOS-1266 (5/96)

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CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
EX MACHINA, INC.

Under Section 805 of the Business Corporation Law  
of the State of New York

THE UNDERSIGNED, being the Chairman and Secretary of Ex Machina, Inc., (the "Corporation") hereby certify that:

1. The name of the Corporation is Ex Machina, Inc.
2. The Certificate of Incorporation was filed by the Department of State on October 17, 1988.
3. The Certificate of Incorporation is amended to (a) change the name of the Corporation, (b) create a new series of preferred stock which the Corporation shall have the authority to issue with rights, privileges and preferences senior to the existing Series AA Preferred Stock, Senior Preferred Stock, Series A Preferred Stock and Series B Preferred Stock as such rights, privileges and preferences are set forth herein below, (c) increase the number of shares of the Corporation's Common Stock, par value \$.01 per share, which the Corporation has the authority to issue, (d) provide for the mandatory conversion under certain circumstances of all issued and outstanding shares of preferred stock into fully paid and nonassessable shares of the Corporation's Common Stock upon the closing of an initial public offering of the Corporation's Common Stock and (e) eliminate the Corporation's right to declare and pay dividends on the preferred stock in additional shares of preferred stock, in each case as set forth below.

The Corporation is presently authorized to issue 35,000,000 shares of Common Stock, par value \$.01 per share, 86,000 shares of Series AA Preferred Stock, par value \$1.00 per share, 47,000 shares of Senior Preferred Stock, par value \$1.00 per share, 65,000 shares of Series A Preferred Stock, par value \$1.00 per share and 15,270 shares of Series B Preferred Stock, par value \$1.00 per share. It is intended to (a) continue the existing shares of Common Stock unchanged as to their nature, but to increase the number of shares of Common Stock authorized to be issued from 35,000,000 shares, par value \$.01 per share, to 45,000,000 shares,

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TRADEMARK  
REEL: 1831 FRAME: 0670

par value \$.01 per share, (b) create a new class of preferred stock to be known as Series AAA Preferred Stock, senior in right of payment of dividends and having a liquidation preference over the Senior Preferred Stock, Series AA Preferred Stock, Series A Preferred Stock and Series B Preferred Stock, (c) provide for the mandatory conversion under certain circumstances of all issued and outstanding shares of preferred stock into fully paid and nonassessable shares of the Corporation's Common Stock upon the closing of an initial public offering of the Corporation's Common Stock and (d) eliminate the Corporation's right to declare and pay dividends on the preferred stock in additional shares of preferred stock, in each case as set forth below of the Corporation's Common Stock.

The remaining rights, preferences and privileges of the Senior Preferred Stock, Series AA Preferred Stock, Series A Preferred Stock and Series B Preferred Stock shall continue unchanged, including, without limitation, their respective par values and dividend rates.

4. To effect the foregoing changes, the Certificate of Incorporation is amended as follows: Article "FIRST" of the Certificate of Incorporation is deleted in its entirety and replaced with the following:

FIRST: The name of the corporation (the "Corporation") is AirMedia, Inc.

Article "FOURTH" of the Certificate of Incorporation is deleted in its entirety and replaced with the following:

FOURTH: The total number of shares of capital stock which the corporation has the authority to issue is 45,279,270 which are divided as follows:

45,000,000 shares of Common Stock, par value \$.01 per share;

65,000 shares of Series AAA Preferred Stock, par value \$1.00 per share;

86,000 shares of Series AA Preferred Stock, par value \$1.00 per share;

47,000 shares of Senior Preferred Stock, par value \$1.00 per share;

65,000 shares of Series A Preferred Stock, par value \$1.00 per share; and

15,270 shares of Series B Preferred Stock, par value \$1.00 per share.

The designations, powers, preferences and rights of the above classes of stock shall be as follows:

I. Preferred Stock.

A. Dividends. Subject to the preferences set forth below, the holders of Series AAA Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any funds legally available therefor, cumulative dividends in cash at the rate of \$8.00 per share per annum and not more, payable quarterly at the discretion of the Board of Directors. Subject to the preferences set forth below, the holders of Series AA Preferred Stock and Senior Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any funds legally available therefor, cumulative dividends in cash at the rate of \$4.00 per share per annum and not more, payable at the discretion of the Board of Directors. Subject to the preferences set forth below, the holders of each of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any funds legally available therefor, cumulative dividends in cash at the rate of (i) \$10.00 per share per annum and not more, payable at the discretion of the Board of Directors from the date of issuance to and including the first date upon which any shares of Senior Preferred Stock are issued and outstanding and (ii) \$4.00 per share per annum and not more, payable at the discretion of the Board of Directors from and after the first date upon which any shares of Senior Preferred Stock are issued and outstanding. Dividends on shares of Series AAA Preferred Stock, Series AA Preferred Stock, Senior Preferred Stock, Series A Preferred Stock and Series B Preferred Stock shall accumulate from the date of issuance, whether or not earned or declared.

Dividend Preference - Series AAA Preferred Stock. So long as any of the Series AAA Preferred Stock remains outstanding, in no event shall any dividend whatsoever, whether in cash or other property (other than shares of Common Stock), be paid or declared or any distribution be made on the Series AA Preferred Stock, the Senior Preferred Stock, the Series A Preferred Stock, the Series B Preferred Stock or Common Stock, respectively, nor shall any shares of the Series AA Preferred Stock, the Senior Preferred Stock, the Series A Preferred Stock, the Series B Preferred Stock or Common Stock be purchased, retired or otherwise acquired for consideration by the Corporation without the unanimous consent of all of the holders of Series AAA Preferred Stock (i) unless the aggregate cumulative unpaid dividends of the Series AAA Preferred Stock for all past dividend periods from the date of issuance of such shares of Series AAA Preferred Stock shall have been paid or declared and a sum set apart sufficient for the payment thereof; and (ii)

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unless, if at any time the Corporation is obligated to retire shares of Series AAA Preferred Stock pursuant to any mandatory redemption requirement, sinking fund or a fund of a similar nature, all arrears, if any, in respect of the retirement of the Series AAA Preferred Stock shall have been made good.

Dividend Preference - Series AA Preferred Stock. So long as any of the Series AA Preferred Stock remains outstanding, in no event shall any dividend whatsoever, whether in cash or other property (other than shares of Common Stock), be paid or declared or any distribution be made on the Senior Preferred Stock, the Series A Preferred Stock, the Series B Preferred Stock or Common Stock, respectively, nor shall any shares of the Senior Preferred Stock, the Series A Preferred Stock, the Series B Preferred Stock or Common Stock be purchased, retired or otherwise acquired for consideration by the Corporation without the unanimous consent of all of the holders of Series AA Preferred Stock (i) unless the aggregate cumulative unpaid dividends of the Series AA Preferred Stock for all past dividend periods from the date of issuance of such shares of Series AA Preferred Stock shall have been paid or declared and a sum set apart sufficient for the payment thereof; and (ii) unless, if at any time the Corporation is obligated to retire shares of Series AA Preferred Stock pursuant to any mandatory redemption requirement, sinking fund or a fund of a similar nature, all arrears, if any, in respect of the retirement of the Series AA Preferred Stock shall have been made good.

Dividend Preference - Senior Preferred Stock. So long as any of the Senior Preferred Stock remains outstanding, in no event shall any dividend whatsoever, whether in cash or other property (other than shares of Common Stock), be paid or declared or any distribution be made on the Series A Preferred Stock, the Series B Preferred Stock or Common Stock, respectively, nor shall any shares of the Series A Preferred Stock, the Series B Preferred Stock or Common Stock be purchased, retired or otherwise acquired for consideration by the Corporation without the unanimous consent of all of the holders of Senior Preferred Stock (i) unless the aggregate cumulative unpaid dividends of the Senior Preferred Stock for all past dividend periods from the date of issuance of such shares of Senior Preferred Stock shall have been paid or declared and a sum set apart sufficient for the payment thereof; and (ii) unless, if at any time the Corporation is obligated to retire shares of Senior Preferred Stock pursuant to any mandatory redemption requirement, sinking fund or a fund of a similar nature, all arrears, if any, in respect of the retirement of the Senior Preferred Stock shall have been made good.

Dividend Preference - Series A Preferred Stock. So long as any of the Series A Preferred Stock remains outstanding, in no event shall any dividend whatsoever, whether in cash or other property (other than shares of Common Stock), be paid or declared or any distribution be made on the Series B Preferred Stock or Common Stock, respectively, nor shall any shares of the Series B

Preferred Stock or Common Stock be purchased, retired or otherwise acquired for a consideration by the Corporation without the unanimous consent of all of the holders of Series A Preferred Stock (i) unless the aggregate cumulative unpaid dividends of the Series A Preferred Stock for all past dividend periods from the date of issuance of such shares of Series A Preferred Stock shall have been paid or declared and a sum set apart sufficient for the payment thereof; and (ii) unless, if at any time the Corporation is obligated to retire shares of Series A Preferred Stock pursuant to any mandatory redemption requirement, sinking fund or a fund of a similar nature, all arrears, if any, in respect of the retirement of the Series A Preferred Stock shall have been made good.

Dividend Preference - Series B Preferred Stock. So long as any of the Series B Preferred Stock remains outstanding, in no event shall any dividend whatsoever, whether in cash or other property (other than shares of Common Stock), be paid or declared or any distribution be made on the Common Stock, nor shall any shares of Common Stock be purchased, retired or otherwise acquired for a consideration by the Corporation without the unanimous consent of all of the holders of Series B Preferred Stock (i) unless the aggregate cumulative unpaid dividends of the Series B Preferred Stock for all past dividend periods from the date of issuance of such shares of Series B Preferred Stock shall have been paid or declared and a sum set apart sufficient for the payment thereof; and (ii) unless, if at any time the Corporation is obligated to retire shares of Series B Preferred Stock pursuant to any mandatory redemption requirement, sinking fund or a fund of a similar nature, all arrears, if any, in respect of the retirement of the Series B Preferred Stock shall have been made good.

Subject to the foregoing provisions and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors may be declared and paid on the Common Stock from time to time out of the remaining funds of the Corporation legally available therefor, and the Series AAA Preferred Stock, the Series AA Preferred Stock, the Senior Preferred Stock, the Series A Preferred Stock and the Series B Preferred Stock shall not be entitled to participate in any such dividend, whether payable in cash, stock or otherwise.

R. Right on Liquidation. In the event of any liquidation, distribution or sale of all or substantially all of the assets, dissolution or winding up of the Corporation, whether voluntary or involuntary, or unless the holders of a majority of the outstanding shares of that series of Preferred Stock elect otherwise in writing, in the event of any merger, consolidation or reorganization, except, in each case, in a transaction in which the Corporation's shareholders receive, as a result of such transaction, all of the shares of the transferee or surviving corporation or its parent and such shares are substantially identical to the shares held by them in the Corporation both in number and in type, the following distributions shall be made to

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the holders of the Preferred Stock in the following order of priority: the holders of Series AAA Preferred Stock shall be entitled to be paid One Hundred Dollars (\$100.00) in cash per share, together with a sum, in the case of each share of the Series AAA Preferred Stock, computed at the annual dividend rate provided for herein from the date on which dividends on such share became cumulative to the date fixed for such distribution or payment less the aggregate amount of all cumulative dividends, if any, theretofore and on such distribution or payment date paid thereon, and upon such payment in full to the holders of the Series AAA Preferred Stock, the holders of Series AA Preferred Stock shall be entitled to be paid One Hundred Dollars (\$100.00) in cash per share, together with a sum, in the case of each share of the Series AA Preferred Stock, computed at the annual dividend rate provided for herein from the date on which dividends on such share became cumulative to the date fixed for such distribution or payment less the aggregate amount of all cumulative dividends, if any, theretofore and on such distribution or payment date paid thereon, and upon such payment in full to the holders of the Series AA Preferred Stock, the holders of Senior Preferred Stock shall be entitled to be paid One Hundred Dollars (\$100.00) in cash per share, together with a sum, in the case of each share of the Senior Preferred Stock, computed at the annual dividend rate provided for herein from the date on which dividends on such share became cumulative to the date fixed for such distribution or payment less the aggregate amount of all cumulative dividends, if any, theretofore and on such distribution or payment date paid thereon, and upon such payment in full to the holders of the Senior Preferred Stock, the holders of the Series A Preferred Stock shall be entitled to be paid One Hundred Dollars (\$100.00) in cash per share, together with a sum, in the case of each share of the Series A Preferred Stock, computed at the annual dividend rate provided for herein from the date on which dividends on such share became cumulative to the date fixed for such distribution or payment less the aggregate amount of all cumulative dividends, if any, theretofore and on such distribution or payment date paid thereon, and upon such payment in full to the holders of the Series A Preferred Stock, the holders of the Series B Preferred Stock shall be entitled to be paid One Hundred Dollars (\$100.00) in cash per share, together with a sum, in the case of each share of the Series B Preferred Stock computed at the annual dividend rate provided for herein from the date on which dividends on such share became cumulative to the date fixed for such distribution or payment less the aggregate amount of all cumulative dividends, if any, theretofore and on such distribution or payment date paid thereon. If such payments on the Preferred Stock shall have been made in full to the holders thereof, the remaining assets and funds of the Corporation shall be distributed among the holders of the Common Stock according to their respective shares.

If, upon any such liquidation, distribution or sale of all or substantially all of the assets, dissolution or winding up of the Corporation, or any such merger, consolidation or



reorganization, the remaining assets of the Corporation available for the distribution to its shareholders shall be insufficient to pay the holders of the Series AAA Preferred Stock the full amount to which they shall be entitled, the holders of the Series AAA Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect to the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

If, after the payment of all preferential amounts required to be paid to the holders of the Series AAA Preferred Stock upon any such liquidation, distribution or sale of all or substantially all of the assets, dissolution or winding up of the Corporation or any such merger, consolidation or reorganization, the remaining assets of the Corporation shall be insufficient to pay the holders of the Series AA Preferred Stock the full amount to which they shall be entitled, the holders of the Series AA Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect to the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

If, after the payment of all preferential amounts required to be paid to the holders of the Series AAA Preferred Stock and the Series AA Preferred Stock upon any such liquidation, distribution or sale of all or substantially all of the assets, dissolution or winding up of the Corporation or any such merger, consolidation or reorganization, the remaining assets of the Corporation shall be insufficient to pay the holders of the Senior Preferred Stock the full amount to which they shall be entitled, the holders of the Senior Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect to the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

If, after the payment of all preferential amounts required to be paid to the holders of the Series AAA Preferred Stock, the Series AA Preferred Stock and the Senior Preferred Stock upon any such liquidation, distribution or sale of all or substantially all of the assets, dissolution or winding up of the Corporation or any such merger, consolidation or reorganization, the remaining assets of the Corporation shall be insufficient to pay the holders of the Series A Preferred Stock the full amount to which they shall be entitled, the holders of the Series A Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect to the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

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If, after the payment of all preferential amounts required to be paid to the holders of the Series AAA Preferred Stock, the Series AA Preferred Stock, the Senior Preferred Stock and Series A Preferred Stock upon any such liquidation, distribution or sale of all or substantially all of the assets, dissolution or winding up of the Corporation or any such merger, consolidation or reorganization, the remaining assets of the Corporation shall be insufficient to pay the holders of the Series B Preferred Stock the full amount to which they shall be entitled, the holders of the Series B Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect to the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

C. Consents. (i) So long as any shares of the Series AAA Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote or written consent of the holders of record of a majority of the shares of the Series AAA Preferred Stock then outstanding, voting or consenting, as the case may be, separately as a class:

(a) authorize or effect any sale, lease, transfer or other disposition of any material portion of the assets of the Corporation out of the ordinary course of the Corporation's business; or

(b) authorize the payment by the Corporation of dividends (whether in cash or other property) or the redemption or repurchase of any capital stock of the Corporation, except as otherwise required by the Certificate of Incorporation.

(ii) So long as any shares of the Series AA Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote or written consent of the holders of record of at least eighty percent (80%) of the shares of the Series AA Preferred Stock then outstanding, voting or consenting, as the case may be, separately as a class:

(a) authorize or effect any sale, lease, transfer or other disposition of any material portion of the assets of the Corporation out of the ordinary course of the Corporation's business; or

(b) authorize the payment by the Corporation of dividends (whether in cash or other property) or the redemption or repurchase of any capital stock of the Corporation, except as otherwise required by the Certificate of Incorporation; provided, however, that notwithstanding anything to the contrary contained herein, the consent of the Series AA Preferred Stock shall not be required for the

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payment of any dividends with respect to the Series AAA Preferred Stock.

(iii) So long as any shares of the Senior Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote or written consent of the holders of record of seventy-five percent (75%) of the shares of the Senior Preferred Stock then outstanding, voting or consenting, as the case may be, separately as a class:

(a) authorize or effect any sale, lease, transfer or other disposition of any material portion of the assets of the Corporation out of the ordinary course of the Corporation's business; or

(b) authorize the payment by the Corporation of dividends (whether in cash or other property) or the redemption or repurchase of any capital stock of the Corporation, except as otherwise required by the Certificate of Incorporation; provided, however, that notwithstanding anything to the contrary contained herein the consent of the Senior Preferred Stock shall not be required for the payment of any accrued but unpaid dividends with respect to the Series AA Preferred Stock or for the payment of any dividends with respect to the Series AAA Preferred Stock.

(iv) So long as any shares of the Series A Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote or written consent of the holders of record of a majority of the shares of the Series A Preferred Stock then outstanding, voting or consenting, as the case may be, separately as a class:

(a) authorize or effect any sale, lease, transfer or other disposition of any material portion of the assets of the Corporation out of the ordinary course of the Corporation's business; or

(b) authorize the payment by the Corporation of dividends (whether in cash or other property) or the redemption or repurchase of any capital stock of the Corporation, except as otherwise required by the Certificate of Incorporation; provided, however, that notwithstanding anything to the contrary contained herein the consent of the Series A Preferred Stock shall not be required for the payment of any accrued but unpaid dividends with respect to the Series AA Preferred Stock or the Senior Preferred Stock or for the payment of any dividends with respect to the Series AAA Preferred Stock.

(v) The Corporation shall not amend the Certificate of Incorporation, increase the authorized number of shares of Series AAA Preferred Stock or authorize the issuance of any series

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of preferred stock with preference or priority on a parity with or over the Series AAA Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, distribution of or sale of assets, dissolution or winding up of the Corporation, or redemption, without the written consent or affirmative vote of the holders of record of a majority of the then outstanding shares of Series AAA Preferred Stock, voting or consenting, as the case may be, separately as a class. The Corporation shall not amend the Certificate of Incorporation, increase the authorized number of shares of Series AA Preferred Stock or authorize the issuance of any series of preferred stock with preference or priority on a parity with or over the Series AA Preferred Stock (other than the Series AAA Preferred Stock) as to the right to receive either dividends or amounts distributable upon liquidation, distribution of or sale of assets, dissolution or winding up of the Corporation, or redemption, without the written consent or affirmative vote of the holders of record of at least eighty (80%) of the then outstanding shares of Series AA Preferred Stock, voting or consenting, as the case may be, separately as a class. The Corporation shall not amend the Certificate of Incorporation, increase the authorized number of shares of Senior Preferred Stock or authorize the issuance of any series of preferred stock with preference or priority on a parity with or over the Senior Preferred Stock (other than the Series AAA Preferred Stock and Series AA Preferred Stock) as to the right to receive either dividends or amounts distributable upon liquidation, distribution of or sale of assets, dissolution or winding up of the Corporation, or redemption, without the written consent or affirmative vote of the holders of record of at least two-thirds of the then outstanding shares of Senior Preferred Stock, voting or consenting, as the case may be, separately as a class. The Corporation shall not amend the Certificate of Incorporation or authorize the issuance of any series of preferred stock with preference or priority over the Series A Preferred Stock (other than the Series AAA Preferred Stock, the Series AA Preferred Stock and the Senior Preferred Stock) as to voting rights or the right to receive either dividends or amounts distributable upon liquidation, distribution of or sale of assets, dissolution or winding up of the Corporation without the written consent or affirmative vote of the holders of record of at least two-thirds of the then outstanding shares of Series A Preferred Stock, voting or consenting, as the case may be, separately as a class.

D. Voting Rights. Except as otherwise provided by law, the holders of Preferred Stock shall not be entitled to notice of, or to vote at, any meeting of the shareholders of the Corporation nor to vote upon matters relating to the business or affairs of the Corporation other than those specifically referred to herein.

E. Redemption. (i) Mandatory Redemption. The Corporation shall redeem, subject to the provisions of Section H below, (to the extent that such redemption shall not violate any applicable provisions of the laws of the State of New York) at a

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price of One Hundred Dollars (\$100.00) per share plus an amount equal to any and all dividends accrued and unpaid, but without interest (the "Redemption Price"), all issued and outstanding shares of Preferred Stock upon the consummation of an initial public offering of the Corporation's Common Stock 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 Company to the public. If fewer than the required number of shares of Preferred Stock are to be redeemed pursuant to this sub-paragraph on any date, then the number of shares to be redeemed shall be determined by the Board of Directors, and such shares shall be redeemed pro rata from all holders of Preferred Stock entitled to have their shares redeemed on such date in proportion to the total number of shares of Preferred Stock held by each such holder. If the Corporation is unable on any redemption date to redeem any shares of Preferred Stock then to be redeemed because such redemption would violate the applicable laws of the State of New York, then the Corporation shall redeem such shares as soon thereafter as the restrictions precluding such redemption shall no longer be applicable.

(ii) The Preferred Stock shall not be entitled to the benefits of any retirement or sinking fund.

F. Redemption Procedure. Notice of every redemption of Preferred Stock shall be given by mailing the same to every holder of record, any of whose shares are then to be redeemed, not less than 15 nor more than 30 days prior to the date fixed as the date of the redemption thereof, at the respective addresses of such holders as the same shall appear on the stock transfer books of the Corporation. The notice shall state that the shares specified in such notice will be redeemed by the Corporation at the Redemption Price and on the date specified in such notice, upon the surrender for cancellation at the places designated in such notice, of the certificates representing the shares so to be redeemed, properly endorsed in blank for transfer, or accompanied by proper instruments of assignment and transfer in blank, bearing any necessary transfer tax stamps thereto affixed and canceled, or accompanied by cash or a certified check in the amount of any stock transfer tax applicable to such transaction. On and after the date specified in the notice described above, each holder of shares called for redemption, upon presentation and surrender in accordance with such notice of the certificates for shares held by such holder and called for redemption, shall be entitled to receive therefor the applicable Redemption Price. If the Corporation shall give notice of redemption as aforesaid (and unless the Corporation shall fail to pay the Redemption Price of shares presented for redemption in accordance with such notice), all shares called for redemption shall be deemed to have been redeemed on the date specified in such notice whether or not the certificates for such shares shall be surrendered for redemption and cancellation, and such shares so called for redemption shall from and after such date cease to represent any interest whatsoever in the Corporation or

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its property, and the holders thereof shall have no rights other than the right to receive such Redemption Price but without any interest thereon from or after such date.

G. Cancellation of Redeemed Shares. All shares of Preferred Stock purchased or redeemed by the Corporation shall be forthwith retired and canceled and shall not be reissued, nor shall any other stock be issued in place thereof, but the Corporation may, nevertheless, from time to time thereafter increase its capital stock in the manner and to the extent permitted by law and by the Certificate of Incorporation of the Corporation.

H. Exchange of Preferred Stock. In the event that the Corporation intends to effect an underwritten initial public offering covering the offer and sale of Common Stock for the account of the Corporation to the public, and in connection therewith the managing underwriter(s) of such offering advises the Corporation's Board of Directors in writing that in its judgment it would be detrimental to the offering if some or all of the proceeds of the offering were to be applied to the redemption of the outstanding shares of Preferred Stock pursuant to Section E hereof, each holder of shares of Preferred Stock shall, upon notice to such holder given by mailing the same to every holder of record whose shares are to be exchanged, not less than 15 nor more than 30 days prior to the date fixed as the date of exchange thereof, exchange with the Corporation as of the closing date of the initial public offering all of the shares of Preferred Stock owned by such holder for fully paid and nonassessable shares of Common Stock and the Corporation shall take such action as shall be necessary to issue to each holder of Preferred Stock in such exchange the applicable number of shares of Common Stock. Each share of Preferred Stock shall be exchangeable for the number of shares of Common Stock obtained by dividing the redemption price for the class of Preferred Stock (including accrued by unpaid dividends) as of the date of the closing of the initial public offering by the initial public offering price, less underwriting discounts and commissions. No holder of shares of Preferred Stock shall be required to exchange shares of Preferred Stock for Common Stock unless all other holders of Preferred Stock are required to take such action.

I. Cancellation of Exchanged Shares. All shares of Preferred Stock exchanged by the Corporation shall be deemed to have been exchanged in accordance with Section H hereof upon the closing of the initial public offering whether or not the certificates for such shares are surrendered for exchange and cancellation, and such shares shall from and after such date cease to represent any interest whatsoever in the Corporation or its property, and the holders thereof shall have no rights, other than the right to receive such shares of Common Stock as provided in Section H from or after such date. All shares of Preferred Stock exchanged by the Corporation shall be forthwith retired and canceled and shall not be reissued, nor shall any other stock be

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issued in place thereof, but the Corporation may, nevertheless, from time to time thereafter increase its capital stock in the manner and to the extent permitted by law and by the Certificate of Incorporation of the Corporation.

II. Common Stock

J. Dividends. Subject to the preferences and other rights of the Preferred Stock, the holders of the Common Stock shall be entitled to receive dividends when, as and if declared by the Board of Directors of the Corporation out of funds legally available therefor.

K. Liquidation. In the event of any liquidation, distribution or sale of assets, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment or provision for payment to the holders of Preferred Stock of amounts to which they may be entitled as set out above, the remaining assets of the Corporation available for shareholders shall be distributed equally per share to the holders of the Common Stock.

L. Voting Rights. The holders of the Common Stock shall be entitled to one vote in respect of each share held on all matters submitted to a vote of the holders of Common Stock.

5. This Certificate of Amendment was authorized and approved by the Board of Directors and the Holders of all of the issued and outstanding Common Stock, Series AA Preferred Stock, Senior Preferred Stock, Series A Preferred Stock and Series B Preferred Stock by a Joint Unanimous Written Consent of the Board of Directors and Stockholders of the Corporation dated as of April 21, 1997 and thereby duly adopted in accordance with the provisions of the Business Corporation Law of the State of New York.

IN WITNESS WHEREOF, this certificate has been subscribed to this 21<sup>st</sup> day of April, 1997 by the undersigned, who affirm that the statements made herein are true under penalties of perjury.

  
David S. Rose, Chairman

  
Brenda Jaeck, Secretary

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