

08-04-1999



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Tab Settings

To the Honorable Commissioner of

attached original documents or copy thereof
address of receiving party(ies):

1. Name of conveying party(ies):
Virtual Suite, Inc.

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other: _____

Additional names of conveying party(ies) attached? Yes No

Name: **uReach.com, Inc.**

Internal Address: _____

Street Address: **142 Highway 34, Suite 250**

City: **Holmdel** State: **NJ** ZIP: **07733**

Individual(s) citizenship: _____
 Association: _____
 General Partnership: _____
 Limited Partnership: _____
 Corporation-State: **New Jersey**
 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

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other: _____

Execution Date: **June 23, 1999**

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

A. Trademark Application No.(s)
75/691,348

Additional numbers attached? Yes No

B. Trademark registration No.(s)

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

Name: **Carla J. Vrsansky**

Internal Address: **Buchanan Ingersoll, P.C.**

Street Address: **301 Grant Street**
20th Floor

City: **Pittsburgh** State: **PA** ZIP: **15219**

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: _____

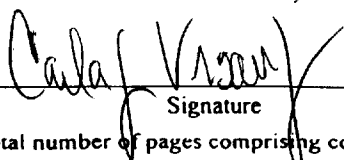
(Attach duplicate copy of this page if paying by deposit account)

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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.

Carla J. Vrsansky  **7/30/99**
Name of Person Signing Signature Date

Total number of pages comprising cover sheet: **16**

CERTIFICATION

I hereby certify that the Amended and Restated Certificate of Incorporation changing the corporate name from Virtual Suite, Inc. to uReach.com, Inc. is a true and exact copy of the original Amendment and Restated Certificate of Incorporation.

July 30, 1999
Date

Angelina F. Beyerl
Angelina F. Beyerl

Notarial Seal
Angelina F. Beyerl, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Sept. 24, 2000
Member, Pennsylvania Association of Notaries

**CERTIFICATE REQUIRED TO BE FILED WITH THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
VIRTUAL SUITE, INC.**

Pursuant to the provisions of Section 14A:9-5(5) of the New Jersey Business Corporation Act (the "Act"), the undersigned corporation hereby executes the following certificate:

1. The name of the corporation is uReach.com, Inc. (the "Corporation").
2. The Amended and Restated Certificate of Incorporation was adopted by the Board of Directors of the Corporation on June 21, 1999 and by the shareholders of the Corporation on June 21, 1999 by written consent of Shareholders (the "Shareholders' Consent") without a meeting pursuant to Section 14A:5-6(2) of the Act.
3. The shares entitled to vote on the Amended and Restated Certificate of Incorporation of the Corporation were 6,850,000 shares of Common Stock and 1,502,191 shares of Series A Preferred Stock. Of such shares, 6,850,000 shares of Common Stock and 860,000 of Series A Preferred Stock voted for the adoption of such Amended and Restated Certificate of Incorporation.
4. The Amended and Restated Certificate of Incorporation restates, integrates and amends in its entirety the provisions of the Corporation's Certificate of Incorporation, as amended to date. The Amended and Restated Certificate of Incorporation provides for, among other things, the change of the Corporation's name to uReach.com, Inc. and the designation of (i) 1,600,000 shares of Preferred Stock as Series A Preferred Stock and (ii) 4,000,000 shares of Preferred Stock as Series B Preferred Stock, in each case, having the rights, powers, preferences and designations set forth in the Restated Certificate, with the remaining 4,400,000 shares of Preferred Stock remaining undesignated.

IN WITNESS WHEREOF, the undersigned has signed this Certificate on behalf of the Corporation this 23rd day of June, 1999.

By: 

Krishnamurthy Kambhampati, President

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Virtual Suite, Inc.

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

FILED

JUN 28 1999

James A. DiStasio, Jr.
State Treasurer

ARTICLE I

The name of the corporation (the "Corporation") is uReach.com, Inc.

ARTICLE II

The address of the Corporation's registered office in the State of New Jersey is 142 Highway 34, Suite 250, Holmdel, New Jersey 07733. The name of its registered agent at such address is David J. Itner. The current directors of the Corporation are David J. Itner, Krishnamurty Kambhampati, Tsuyoshi Taira and Venkatesh Harinarayan each of whose address is c/o uReach.com, Inc., 142 Highway 34, Suite 250, Holmdel, New Jersey 07733.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the New Jersey Business Corporation Act (the "NJBCA").

ARTICLE IV

The Corporation is authorized to issue two classes of capital stock, which shall be Common Stock and Preferred Stock. The total number of shares of capital stock that the Corporation is authorized to issue is Sixty Million (60,000,000), without par value. The number of shares of Common Stock authorized to be issued is Fifty Million (50,000,000) and the number of shares of Preferred Stock authorized to be issued is Ten Million (10,000,000), of which (i) 1,600,000 shares are designated as Series A Preferred Stock (the "Series A Preferred Stock"), and (ii) 4,000,000 shares are hereby designated as Series B Preferred Stock (the "Series B Preferred Stock"). The Series A Preferred Stock and the Series B Preferred Stock have the terms, powers, preferences and rights set forth below.

The authorized but undesignated Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation is authorized to determine or alter the powers, preferences and rights and the qualifications, limitations or restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and within the limitations or 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 any such series then outstanding) the number of shares of any such series subsequent to the issuance of shares of that series, to determine the designation of any series, and to fix the number of shares of any series. In case the number of shares of any series shall be so decreased,

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the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

Preferred Stock

The relative rights, preferences, privileges and restrictions granted to Series A Preferred Stock and the Series B Preferred Stock (sometimes collectively referred to hereinafter as the "Preferred Stock") are as follows:

Section 1. Dividends. The holders of the Series A Preferred Stock and the Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation, a dividend of \$.04 and \$.10, respectively, per annum per share (subject to equitable adjustment for stock splits, stock dividends, stock contributions, reclassifications and like occurrences) prior and in preference to payment of any dividend (other than dividends payable solely in Common Stock of the Corporation) with respect to the Common Stock. Dividends shall not be cumulative. No dividend or distribution shall be declared or paid on any shares of Common Stock (other than dividends payable solely in Common Stock of the Corporation) unless at the same time an equivalent dividend or distribution is paid or declared and set aside for payment on the Preferred Stock (on an as converted to Common Stock basis). For purposes of this Section 1, the Series A Preferred Stock and the Series B Preferred Stock shall rank pari passu, and dividends declared or paid shall be declared and paid on a pro-rata basis among the shares of Preferred Stock then outstanding. No right shall accrue to the holders of the Preferred Stock under this paragraph by reason of the fact that dividends on such shares are not declared or paid in any period.

Section 2. Liquidation.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the 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 available for distribution to the holders of Common Stock by reason of their ownership thereof, the amount equal to the Original Purchase Price (as defined in Section 4(a) hereof) per share (as adjusted for any stock splits, stock dividend, recapitalizations or the like with respect to such shares), plus all declared but unpaid dividends in respect of such shares for each share of Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Preferred Stock in proportion to the relative amount each holder would have otherwise been entitled to receive if such distribution had been paid in full as set forth above.

(b) After payment to the holders of the Preferred Stock of the amounts set forth in Section 2(a) hereof, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of the Common Stock and the Preferred Stock in proportion to the relative aggregate number of shares of Common Stock then held by them or into which their Preferred Stock shall then be convertible.

(c) The merger or consolidation of the Corporation with or into another Corporation or person or entity, and the sale or transfer of all or substantially all of the assets of the Corporation, shall not be deemed to be a liquidation, dissolution or winding up of the Corporation.

Section 3. Voting.

(a) Except as otherwise required by law or as set forth herein, each holder of shares of Preferred Stock shall be entitled to that number of votes equal to the whole number of shares of Common Stock issued or issuable upon the conversion of such holder's shares of Preferred Stock immediately after the close of business on the record date fixed for a stockholder meeting or the effective date of such written consent.

(b) The consent of the holders of at least a majority of the Series A Preferred Stock shall be required in connection with: (i) any event that materially and adversely alters or changes the rights, preferences or privileges of the Series A Preferred Stock, (ii) any increase in the number of authorized shares of Series A Preferred Stock, (iii) the issuance of or obligation to issue any capital stock (including any security convertible into or exercisable for any such capital stock) of the Corporation ranking senior to that of the Series A Preferred Stock with respect to dividends or liquidation.

(c) The consent of the holders of at least a majority of the Series B Preferred Stock shall be required in connection with: (i) any event that materially and adversely alters or changes the rights, preferences or privileges of the Series B Preferred Stock, (ii) any increase in the number of authorized shares of Series B Preferred Stock, (iii) the issuance of or obligation to issue any capital stock (including any security convertible into or exercisable for any such capital stock) of the Corporation ranking senior to that of the Series B Preferred Stock with respect to dividends or liquidation.

(d) For so long as any shares of Series A Preferred Stock are outstanding, the holders of shares of Series A Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director of the Corporation. In the case of any vacancy in the office of a director elected by the holders of Series A Preferred Stock, a successor shall be elected to hold office for the unexpired term of such director by the affirmative vote of the holders of a majority of the shares of Series A Preferred Stock given at a special meeting of such holders duly called or by an action by written consent for that purpose or, in the absence of action by such holders, by action of any remaining directors elected by the holders of the Series A Preferred Stock, if any. Any director who shall have been elected by the holders of Series A Preferred Stock may be removed from the Board of Directors during such director's term of office, either for or without cause by, and only by, the affirmative vote of the holders of a majority of the shares of such Series A Preferred Stock, given at a special meeting of the stockholders duly called or by an action by written consent for that purpose.

Section 4. Conversion Rights. The holders of the Preferred Stock shall have the following conversion rights and obligations (the "Conversion Rights"):

(a) **Right to Convert Preferred Stock.** Subject to Section 4(h) hereof, each share of Preferred Stock shall be convertible 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 dividing the applicable Original Purchase Price by the applicable Conversion Price (as defined below) of such share of Preferred Stock, determined as hereinafter provided, in effect at the time of conversion. The "Original Purchase Price" shall mean \$0.50 per share with respect to the Series A Preferred Stock and \$1.25 per share with respect to the Series B Preferred Stock. The "Conversion Price" shall mean \$0.50 per share with respect to the Series A Preferred Stock and \$1.25 per share with respect to the Series B Preferred Stock. The applicable Conversion Price shall be subject to adjustment as hereinafter provided.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price immediately prior to the earlier to occur of (a) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of Common Stock to the public at a price of not less than three dollars (\$3.00) per share (as adjusted for any stock split, stock dividend, recapitalization or the like), and an aggregate offering price which results in net cash proceeds to the Corporation of at least fifteen million dollars (\$15,000,000) (a "Qualified Public Offering"), (b) the affirmative vote of the holders of at least a majority of the shares of Preferred Stock then outstanding and (c) the merger or consolidation of the Corporation with or into another entity (other than with or into a wholly-owned subsidiary or with or into another entity in which the holders of the capital stock of the Corporation continue to hold at least 50% of the voting securities of the surviving entity or the sale or transfer of all or substantially all of the assets of the Corporation.

(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 to such holder cash equal to such fraction multiplied by the then applicable Conversion Price.

(i) Subject to clause (ii) below, before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or 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. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, a check payable to such holder in the amount of any cash amounts payable as a result of the conversion of any shares of Preferred Stock into fractional shares of Common Stock, any declared and unpaid dividends on the converted Preferred Stock and, if less than all of the shares of the Preferred Stock represented by such certificate are converted into Common Stock, a certificate representing the shares of Preferred Stock not converted into Common Stock. In the event of any conversion at the election of a holder of Preferred Stock, 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 such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act, the conversion shall be conditioned upon the closing with the underwriter 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 Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. Notice of such conversion shall be given by the Corporation by mail, postage pre-paid, to the holders of the Preferred Stock at their addresses shown in the Corporation's records, within a reasonable time after the closing date of the sale of such securities. Promptly after the closing date of the sale of such securities as specified in such notice, each holder of Preferred Stock shall surrender the certificate or certificates representing such holder's shares of Preferred Stock for the number of shares of Common Stock to which such holder is entitled, at the office of the Corporation or any transfer agent for the applicable series of Preferred Stock. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, and a check payable to the holder in the amount of any cash amounts payable as a result of the conversion of any shares of Preferred Stock into fractional shares of Common Stock, and the amount of any declared and unpaid dividends on the converted Preferred Stock. Notwithstanding that any certificate representing the Preferred Stock to be converted shall not have been surrendered, each holder of such Preferred Stock shall thereafter be treated for all purposes as the record holder of the number of shares of Common Stock issuable to such holder upon such conversion.

(d) **Adjustment of Conversion Price.** The applicable Conversion Price of each series of Preferred Stock shall be subject to adjustment as follows:

(i) **Adjustments for Subdivision, Combinations or Consolidations of Common Stock.** In the event the outstanding shares of Common Stock shall be subdivided or increased (by stock split, stock dividend, recapitalization or otherwise) into a greater number of shares of Common Stock, and no equivalent subdivision or increase is made with respect to the Preferred Stock, the respective Conversion Price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such subdivision or increase, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the respective Conversion Price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(ii) **Adjustments for Other Dividends and Distributions.** In the event the Corporation at any time or from time to time makes or fixes a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in

securities of the Corporation, and no equivalent dividend or other distribution is declared or made to the Preferred Stock, then and in each such event provision shall be made so that the holders of each series of Preferred Stock shall receive, concurrently therewith, the amount of such securities which they would have received had their Preferred Stock been converted into Common Stock on the date of such event.

(iii) Adjustments for Reclassification, Exchange and Substitution. In the event the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), and no equivalent capital reorganization, reclassification or other change is made with respect to the Preferred Stock, the respective Conversion Price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that each series of Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders thereof would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders thereof upon conversion of the Preferred Stock immediately before such change.

(e) Adjustments to Conversion Price for Certain Dilutive Issues. The Conversion Price of each series of Preferred Stock shall be subject to adjustment as follows:

(i) Special Definitions. For purposes of this Section 4(e), the following definitions shall apply:

(1) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "Original Issue Date" shall mean the date on which the first shares of a series of Preferred Stock are issued.

(3) "Convertible Securities" shall mean any evidence of indebtedness, shares (other than Common Stock) or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common" shall mean all shares of Common Stock issued (or, pursuant to Section 4(e)(iii), deemed to be issued) by the Corporation on or after the Original Issue Date, other than shares of Common Stock issued or issuable at any time:

(A) upon conversion of the Preferred Stock authorized herein;

(B) to employees, officers, directors and consultants of the Corporation pursuant to any one or more employee stock incentive plans or agreements approved

by the Board of Directors in an aggregate amount, net of repurchases and cancellations, of not more than 4,150,000 shares;

(C) as a dividend or distribution on the Preferred Stock authorized herein or pursuant to any event for which adjustment is made pursuant to this Section 4.

(D) which are sold in a Qualified Public Offering; or

(E) as a stock dividend or upon any stock split, stock combination or like occurrence.

(ii) No Adjustment of Conversion Price. No adjustment in the applicable Conversion Price of any series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Shares of Common issued or deemed to be issued by the Corporation is less than the respective Conversion Price of such series of Preferred Stock in effect on the date of, and immediately prior to such issue.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then 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 upon the exercise of such Options or, in the case of Convertible Securities and options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common issued as of the time of such issue, or in the case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(e)(vi) hereof) of such Additional Shares of Common would be less than the Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common are deemed to be issued:

(A) except as provided in clause (B) below, no further adjustment in the Conversion Price of the applicable series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the 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 any such increase or decrease becoming effective, be

recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the 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:

(I) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the applicable Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price on the original adjustment date or (ii) the applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common between the original adjustment date and such readjustment date; and

(E) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the applicable Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustments shall be made in the same manner provided in clause (C) above.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(e)(iii)) without consideration or for a consideration per share less than the Conversion Price of a series of Preferred Stock then in effect immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such

issue, plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue, plus the number of such Additional Shares of Common so issued; provided that for the purposes of this Section 4(e)(iv), all shares of Common Stock issuable upon exercise of all outstanding Options and upon conversion of outstanding Convertible Securities shall be deemed to be outstanding, and immediately after any Additional Shares of Common are deemed issued pursuant to Section 4(e)(iii), such Additional Shares of Common shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Section 4(e), the consideration received by the Corporation for the issue of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the net amount of cash received by the Corporation excluding expenses, discounts and commissions payable by the Corporation in connection with such issuance or sale and amounts paid or payable for accrued interest;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors net of expenses as set forth in clause (A) above; and

(C) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to Section 4(e)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a

subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities or, in the case of Option for Convertible Securities, the exercise of such options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(3) **Stock Dividends.** Any Additional Shares of Common deemed to have been issued relating to stock dividends shall be deemed to have been issued for no consideration.

(f) **No Impairment.** This Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issuance 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 this Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 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 Preferred Stock against impairment.

(g) **Reservation of Common 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 Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of 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 then outstanding shares of the Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the option 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 purposes, including, without limitation, engaging in reasonable efforts to obtain the necessary stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation.

(b) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, 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) all such adjustments and readjustments since the Original Issue Date, (ii) the Conversion Price of each series of Preferred Stock 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 Preferred Stock.

Section 5. No Reissuance of Preferred. No shares of Preferred Stock acquired by this Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

Common Stock

1. **Voting.** Each holder of shares of Common Stock shall be entitled to one vote for each share of Common Stock held on all matters as to which holders of Common Stock shall be entitled to vote. In any election of directors, no holder of shares of Common Stock shall be entitled to cumulate his or her votes by giving one candidate more than one vote per share.

2. **Other Rights.** Each share of Common Stock issued and outstanding shall be identical in all respects one with the other. In the event any dividend is paid on any shares of Common Stock, the same dividend shall be paid on all shares of Common Stock outstanding at the time of such payment. Except for and subject to those rights expressly granted to the holders of the Preferred Stock, or except as may be provided by the laws of the State of New Jersey, the holders of Common Stock shall have exclusively all other rights of stockholders.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE VIII

The number of directors which shall constitute the full Board of Directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

ARTICLE IX

(a) No director or officer shall be personally liable to the Corporation or its shareholders for damages for breach of any duty owed to the Corporation or its shareholders, except that this provision shall not relieve a director or officer from liability for any breach of duty based on an act or omission (a) in breach of such person's duty of loyalty to the corporation or its shareholders, (b) not in good faith or involving a knowing violation of law, or (c) resulting in receipt by such person of an improper personal benefit. No amendment to, expiration of or repeal of this Article shall have any effect on the liability or alleged liability of any director or officer of the Corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment, expiration or repeal.

(b) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

ARTICLE X

Meetings of the stockholders may be held within or without the State of New Jersey, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of New Jersey at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

* * *

IN WITNESS WHEREOF, the undersigned has signed this Certificate on behalf of the Corporation as of the 23rd day of June, 1999.



Krishnamurty Kambhampati, President

(109212-3)