

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "NEW AIR CORPORATION", CHANGING ITS NAME FROM "NEW AIR CORPORATION" TO "JETBLUE AIRWAYS CORPORATION", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF JULY, A.D. 1999, AT 5 O'CLOCK P.M.



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A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION: 0080105

DATE: 11-15-99

TRADEMARK
REEL: 002012 FRAME: 0217

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
NEW AIR CORPORATION

New Air Corporation, a Delaware corporation (the "Corporation"), does hereby certify that:

FIRST: The present name of the Corporation is "New Air Corporation". The Corporation was originally incorporated under the name of New Air Corporation. The date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was August 24, 1998 and the date of filing of the Amended and Restated Certificate of Incorporation of the Corporation with the Secretary of the State of the State of Delaware was December 1, 1998.

SECOND: The Corporation has received payment for its capital stock.

THIRD: This Restated Certificate of Incorporation (the "Certificate") amends and restates in its entirety the present Amended and Restated Certificate of Incorporation of the Corporation. This Certificate has been duly adopted and approved by the Board of Directors and stockholders of the Corporation in accordance with the provisions of Sections 141(f), 228, 242 and 245 of the General Corporation Law of the State of Delaware.

FOURTH: This Certificate shall become effective immediately upon its filing with the Secretary of State of the State of Delaware.

FIFTH: Upon the filing with the Secretary of State of the State of Delaware of this Certificate, the Certificate of Incorporation of the Corporation shall be amended and restated in its entirety to read as set forth on Exhibit A attached hereto.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be executed by a duly authorized officer this 27 day of July, 1999.

NEW AIR CORPORATION

By: 
David Needleman
Chief Executive Officer

Exhibit A

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

OF

JetBlue Airways Corporation

ARTICLE I

NAME

The name of the corporation is "JetBlue Airways Corporation" (the "Corporation").

ARTICLE II

REGISTERED OFFICE AND AGENT

The address of its registered office in the State of Delaware is 9 East Lockerman Street, City of Dover, County of Kent. The name of its registered agent at such address is National Registered Agents, Inc.

ARTICLE III

OBJECTS AND PURPOSES

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

CAPITAL STOCK

A. AUTHORIZED SHARES.

The total number of shares of capital stock which the Corporation is authorized to issue is 238,500 shares, consisting of (i) 131,000 shares of common stock, \$.01 par value per share (the "Common Stock"), of which (A) 105,000 shares are designated as Class A-1 Common Stock (the "Class A-1 Common Stock") and (B) 26,000 shares are designated as Class A-2 Common Stock (the "Class A-2 Common Stock"), and (ii) 107,500 shares of preferred stock, \$.01 par value per share (the "Preferred Stock"), of which (i) 81,500 shares are designated as Series A-1 Convertible Redeemable Preferred Stock (the "Series A-1 Preferred Stock") and (ii) 26,000 shares are designated as Series A-2 Convertible Redeemable Preferred Stock (the "Series A-2 Preferred Stock").

The designations, powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof with respect to the Preferred Stock and the Common Stock are as set forth in this Article IV.

No Stockholder of the Corporation shall have preemptive rights to purchase any Securities proposed to be issued by the Corporation, whether such rights exist pursuant to Applicable Law or otherwise; provided, however, that nothing contained herein shall in any way modify or affect the rights provided in Article III of the Stockholders Agreement.

B. Definitions

As used in this Restated Certificate, the following capitalized terms have the following meanings:

"Affiliate" means, with respect to any Person, (a) a director, officer, managing member or general partner of such Person or any Person identified in clause (c) below, (b) a spouse, parent, sibling or descendant of such Person (or a spouse, parent, sibling or descendant of any Person identified in clause (a) above) and (c) any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For the purpose of the above definition, the term "control" (including, with correlative meaning, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or investment decisions of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Applicable Dividend Rate" means 10% per annum.

"Applicable Law," with respect to any Person, means all provisions of laws, statutes, ordinances, rules, regulations, permits, certificates or orders of any Governmental Authority applicable to such Person or any of its assets or property or to which such Person or any of its assets or property is subject, and all judgments, injunctions, orders and decrees of all courts and arbitrators in proceedings or actions in which such Person is a party or by which it or any of its assets or properties is or may be bound or subject.

"By-laws" means the By-laws of the Corporation, as amended and in effect from time to time.

"Board" and "Board of Directors" means the Board of Directors of the Corporation.

"Class A-1 Common Stock" has the meaning ascribed to it in Section A of this Article IV.

"Class A-2 Common Stock" has the meaning ascribed to it in Section A of this Article IV.

"Common Stock" means, collectively, the Common Stock (as defined in Section A of this Article IV), including the Class A-1 Common Stock, the Class A-2 Common Stock,

and any other class of capital stock of the Corporation hereafter authorized that is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation.

"Common Stock Equivalents" means all shares of Common Stock outstanding, all shares of Common Stock issuable (without regard to any present restrictions on such issuance) upon the conversion, exchange or exercise of all securities of the Corporation that are convertible, exchangeable or exercisable for Common Stock and all Common Stock appreciation rights, phantom Common Stock rights and other rights to acquire, or to receive or be paid an amount based on the Market Price (less any exercise, conversion or purchase price) of, the Common Stock.

"Conversion Event" shall mean (a) any public offering or public sale of Securities of the Corporation (including a public offering registered under the Securities Act of 1933 and a public sale pursuant to Rule 144 of the Securities and Exchange Commission or any similar rule then in force), (b) any sale of Securities of the Corporation to a person or group of persons (within the meaning of the Exchange Act) if, after such sale, such person or group of persons in the aggregate would own or control Securities of the Corporation which possess in the aggregate the ordinary voting power to elect a majority of the Corporation's directors (provided that such sale has been approved by the Corporation's Board of Directors or a committee thereof), (c) any sale of Securities of the Corporation to a person or group of persons (within the meaning of the Exchange Act) if, after such sale, such person or group of persons in the aggregate would own or control Securities of the Corporation (excluding any Series A-2 Preferred Stock or Class A-2 Common Stock being converted and disposed of in connection with such Conversion Event) which possess in the aggregate the ordinary voting power to elect a majority of the Corporation's directors, (d) any sale of Securities of the Corporation to a person or group of persons (within the meaning of the Exchange Act) if, after such sale, such person or group of persons would, in the aggregate, own, control or have the right to acquire no more than two percent (2%) of the outstanding Securities of any class of voting Securities of the Corporation, (e) a merger, consolidation or similar transaction involving the Corporation if, after such transaction, a person or group of persons (within the meaning of the Exchange Act) in the aggregate would own or control Securities which possess in the aggregate the ordinary voting power to elect a majority of the surviving corporation's directors (provided that the transaction has been approved by the Corporation's Board of Directors or a committee thereof) and (f) any sale of Securities of the Corporation pursuant to the exercise of co-sale rights contained in Section 2.4 of the Stockholders Agreement.

"Conversion Price" has the meaning ascribed to it in Section C.4(b) of this Article IV.

"Converted Shares" has the meaning ascribed to it in Section E.1(a) of this Article IV.

"Converting Shares" has the meaning ascribed to it in Section E.1(a) of this Article IV.

"Corporation" has the meaning ascribed to it in Article I.

IV. "Deferral Notice" has the meaning ascribed to it in Section E.1(b) of this Article

IV. "Deferral Period" has the meaning ascribed to it in Section E.1(b) of this Article

"Equity Incentive Plans" means the Corporation's Management Incentive Stock Option Plan and any other stock option, issuance, appreciation rights or other equity incentive plan of the Corporation.

"Excess Issuances" shall mean the dilutive issuance of Securities by the Corporation when (i) all purchase obligations under Article II of the Stock Purchase Agreement have not been completed, (ii) the Corporation has sufficient availability under any existing line of credit or (iii) the Corporation has sufficient cash flow to meet the obligation or need that such issuance of Securities was proposed to meet or fulfill.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any similar federal law then in force.

"Excluded Securities" has the meaning ascribed to it in the Stockholders Agreement.

"Governmental Authority" shall mean any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or any court, in each case whether of the United States of America or any political subdivision thereof, or of any other country.

"Initial Public Offering" means the closing of an underwritten initial public offering for the account of the Corporation of Class A-1 Common Stock pursuant to a registration statement filed under the Securities Act.

"Investor Notice of Election" has the meaning ascribed to it in Section C.5 of this Article IV.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest of any kind whatsoever in or on such asset (including the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction), (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of securities, any purchase option, call, appreciation right or similar right of a third party with respect to such securities

"Liquidation" means (i) any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, or (ii) any Sale Of The Corporation.

"Management Incentive Stock Option Plan" has the meaning ascribed to it in the Stockholders Agreement.

"Management Stockholder" has the meaning ascribed to it in the Stockholders Agreement.

"Mandatory Conversion Event" means (i) the consummation of a Qualified Public Offering or (ii) the affirmative election of the Requisite Series A-1 holders.

"Market Price" means, as to any security, the average of the closing prices of such security's sales on all United States securities exchanges on which such security may at the time be listed, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, on such day, or, if on any day such security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar or successor organization, in each such case averaged over a period of 21 days consisting of the day as of which "Market Price" is being determined and the 20 consecutive business days prior to such day. If at any time such security is not listed on any domestic securities exchange or quoted in the NASDAQ System or the domestic over-the-counter market, the "Market Price" of such security shall be the fair value thereof as determined in good faith by the Board.

"Original Cost" means, with respect to any share of Series A-1 Preferred Stock or Series A-2 Preferred Stock, as of any particular date, the amount originally paid for such share when it was originally issued. In the event of any change (by way of any recapitalization, subdivision or recombination) in the number or kind of shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock, the Original Cost of the shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock immediately prior to such change shall be ratably adjusted among such shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock immediately after such change.

"Original Issuance Date" means with respect to a share of Series A-1 Preferred Stock or Series A-2 Preferred Stock, the date on which such share of Series A-1 Preferred Stock or Series A-2 Preferred Stock, as the case may be, was first issued, or, in the event such share was issued upon conversion of Preferred Stock, the date on which the original share of Preferred Stock, from which such share of Series A-1 Preferred Stock or Series A-2 Preferred Stock was directly or indirectly converted, was first issued.

"Person" shall be construed broadly and shall include without limitation an individual, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and a Governmental Authority.

"Preferred Dividend Accrual Period" means, with respect to a share of Preferred Stock, (i) the initial period between the Original Issuance Date of such share and the first Preferred Dividend Payment Date occurring after such Original Issuance Date, (ii) the annual

period occurring between each Preferred Dividend Payment Date while such share remains outstanding and (iii) the final period ending on the date such share is no longer outstanding and beginning, on the Preferred Dividend Payment Date immediately preceding such date.

"Preferred Dividend Payment Date" has the meaning ascribed to it in Section C.2 of this Article IV.

"Preferred Holders" means the holders of the Series A-1 Preferred Stock and the holders of the Series A-2 Preferred Stock, collectively.

"Preferred Liquidation Preference" has the meaning ascribed to it in Section C.3 of this Article IV.

"Preferred Record Date" has the meaning ascribed to it on Section C.2(a) of this Article IV.

"Preferred Stock" means, collectively, the Series A-1 Preferred Stock and the Series A-2 Preferred Stock.

"Qualified Public Offering" means an Initial Public Offering which results in aggregate net proceeds to the Corporation of at least \$75,000,000, at a price per share that results in a market capitalization (prior to such Qualified Public Offering) of the Corporation's capital stock of not less than \$600,000,000.

"Redemption Notice" has the meaning ascribed to such term in Section C.5 of this Article IV.

"Registration Rights Agreement" means the Registration Rights Agreement dated on or about November 23, 1998, among the Corporation and the Stockholders named therein, as amended from time to time.

"Regulated Stockholder" means (A) Quantum Industrial Partners LDC and (B) any Person (i) that is subject to the provisions of Regulation Y of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 225 (or any successor to such Regulation) ("Regulation Y"), (ii) that holds equity Securities of the Corporation and (iii) has given written notice to the Corporation that such Person is a Regulated Stockholder.

"Related Documents" means, collectively, the Stock Purchase Agreement, the Stockholders Agreement, the Registration Rights Agreement, the Restricted Stock Agreements, the Warrants, this Restated Certificate and the By-Laws.

"Requisite Series A-1 Holders" means the holders of a majority of the outstanding shares of Series A-1 Preferred Stock at the time in question.

"Requisite Series A-2 Holders" means the holders of a majority of the outstanding shares of Series A-2 Preferred Stock at the time in question.

"Requisite Preferred Holders" means the holders of a majority of the outstanding shares of Preferred Stock at the time in question.

"Restated Certificate" means this Amended and Restated Certificate of Incorporation, as amended and in effect from time to time.

"Restricted Stock Agreements" has the meaning ascribed to it in the Stock Purchase Agreement.

"Restricted Stock" means, with respect to any Regulated Stockholder, any outstanding shares of Preferred Stock and/or Common Stock ever held of record by such Regulated Stockholder or its Affiliates, excluding treasury shares; provided, however, that any such shares shall cease to be Restricted Stock with respect to such Regulated Stockholder when such shares are transferred in a transaction which is a Conversion Event or are acquired by the Corporation or any subsidiary of the Corporation; and provided, further, that the Corporation shall have no responsibility for determining whether any outstanding shares of Preferred Stock and/or Common Stock constitute Restricted Stock with respect to any particular Regulated Stockholder, but shall instead be entitled to receive, and rely exclusively upon, a written notice provided by such Regulated Stockholder designating such shares as Restricted Stock.

"Sale Of The Corporation" means (i) the sale of all or substantially all of the Corporation's assets to a Person who is not an Affiliate of the Corporation, (ii) the sale or transfer of the outstanding capital stock of the Corporation to one or more Persons who are not Affiliates of the Corporation, or (iii) the merger or consolidation of the Corporation with or into another Person who is not an Affiliate of the Corporation, in each case in clauses (ii) and (iii) above under circumstances in which the holders of a majority in voting power of the outstanding capital stock of the Corporation, immediately prior to such transaction, own less than a majority in voting power of the outstanding capital stock of the Corporation or the surviving or resulting corporation or acquirer, as the case may be, immediately following such transaction. A sale (or multiple related sales) of one or more Subsidiaries of the Corporation (whether by way of merger, consolidation, reorganization or sale of all or substantially all assets or securities) which constitutes all or substantially all of the consolidated assets of the Corporation shall be deemed a Sale Of The Corporation.

"Securities" means "securities" as defined in Section 2(1) of the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended, or any similar federal law then in force.

"Securities and Exchange Commission" means the Securities and Exchange Commission or any Governmental Authority succeeding to the functions thereof.

"Series A-1 Preferred Stock" has the meaning ascribed to it in Section A of this Article IV.

"Series A-2 Preferred Stock" has the meaning ascribed to it in Section A of this Article IV.

"Stock Purchase Agreement" means the Stock Purchase Agreement dated on or about November 30, 1998, between the Corporation and the Investors named therein, as amended from time to time.

"Stockholders" has the meaning ascribed to it in the Stockholders Agreement.

"Stockholders Agreement" means the Stockholders Agreement dated on or about November 30, 1998, among the Corporation and the Stockholders named therein, as amended from time to time.

"Subsidiary" of any Person means any other Person (i) whose securities having a majority of the general voting power in electing the board of directors or equivalent governing body of such other Person (excluding securities entitled to vote only upon the failure to pay dividends thereon or the occurrence of other contingencies) are, at the time as of which any determination is being made, owned by such Person either directly or indirectly through one or more other entities constituting subsidiaries or (ii) more than a 50% interest in the profits or capital of whom is, at the time as of which any determination is being made, owned by such Person either directly or indirectly through one or more other entities constituting subsidiaries.

"Warrant" has the meaning ascribed to it in the Stock Purchase Agreement.

C. Preferred Stock

1. Voting Rights.

(a) Series A-1 Preferred Stock.

In addition to the rights provided by law and by paragraphs (b) and (c) below, the holders of Series A-1 Preferred Stock shall be entitled to vote on all matters as to which holders of Class A-1 Common Stock shall be entitled to vote, in the same manner and with the same effect as the holders of Class A-1 Common Stock, voting together with the holders of Class A-1 Common Stock, and any other capital stock of the Corporation entitled to vote together with the Class A-1 Common Stock, all as one class. Each share of Series A-1 Preferred Stock shall entitle the holder thereof to such number of votes as shall equal the sum of (i) the number of shares of Class A-1 Common Stock into which such share of Series A-1 Preferred Stock is then convertible pursuant to Section 4 below and (ii) the number of shares of Class A-1 Common Stock that could be purchased by such holder if such holder exercised all Warrants owned by such holder and the Effective Date (as such term is defined in the Warrant) was the day immediately before the vote.

(b) Series A-2 Preferred Stock.

Except as set forth herein or as otherwise required by law, each outstanding share of Series A-2 Preferred Stock shall not be entitled to vote on any matter on which the stockholders of the Corporation shall be entitled to vote, including any vote to elect directors of the Corporation, and shares of Series A-2 Preferred Stock shall not be included in determining the number of shares voting or entitled to vote on any such matters; provided, however, that the

holders of Series A-2 Preferred Stock shall have the right to vote as a separate class on any merger or consolidation of the Corporation with or into another entity or entities, or any recapitalization or reorganization, in which shares of Series A-2 Preferred Stock would receive or be exchanged for consideration different on a per share basis from consideration received with respect to or in exchange for the shares of Series A-1 Preferred Stock or would otherwise be treated differently from shares of Series A-1 Preferred Stock in connection with such transaction, except that shares of Series A-2 Preferred Stock may, without such a separate class vote, receive or be exchanged for non-voting securities received with respect to or exchanged for the Class A-1 Common Stock so long as (i) such non-voting securities are convertible into such voting securities on the same terms as the Series A-2 Preferred Stock is convertible into Class A-1 Common Stock and (ii) all other consideration is equal on a per share basis. Notwithstanding the foregoing, holders of shares of the Series A-2 Preferred Stock shall be entitled to vote as a separate class on any amendment to this paragraph (b) and on any amendment, repeal or modification of any provision of this Restated Certificate that adversely affects the powers, preferences or special rights of the holders of the Series A-2 Preferred Stock.

(c) Covenants.

For so long as any Preferred Stock remains outstanding, the Corporation shall not, and shall not permit any Subsidiary to, without the affirmative consent or approval of 66 2/3% of the Preferred Stock:

(i) other than Excluded Securities, in any manner authorize, create, designate, issue or sell any class or series of capital stock (including any shares of treasury stock) or rights, options, warrants or other Securities convertible into or exercisable or exchangeable for capital stock or any debt Security which by its terms is convertible into or exchangeable for any equity Security or has any other equity feature or any Security that is a combination of debt and equity, which, in each case, as to the payment of dividends, distribution of assets or redemptions, including, without limitation, distributions to be made upon Liquidation, is senior to the Preferred Stock or which in any manner adversely affects the holders of Preferred Stock; and

(ii) amend, create or increase the number of shares of capital stock of the Corporation that are subject to any Equity Incentive Plans (other than the approval of the terms of, and number of shares associated with, the Equity Incentive Plan referred to in Section 4.6 of the Stockholders' Agreement).

2. Dividends and Distributions.

(a) Cumulative Dividends.

When, as, and if declared by the Board of Directors of the Corporation, out of funds legally available for that purpose, the holders of Preferred Stock shall be entitled to receive, before any dividends shall be declared and paid or set aside for the Common Stock, cash dividends which shall accrue on a daily basis at the Applicable Dividend Rate on the sum of the Original Cost of a share of Preferred Stock plus all accumulated and unpaid dividends thereon, payable on each December 31 (the "Preferred Dividend Payment Date"), the first such Preferred

Dividend Payment Date being December 31, 1999. Dividends shall accrue at the Applicable Dividend Rate regardless of whether the Board of Directors of the Corporation has declared a dividend payment or whether there are any profits, surplus or other funds of the Corporation legally available for dividends. Any dividends which accrue pursuant to this Section 2(a) during a Preferred Dividend Accrual Period and which are not paid on the Preferred Dividend Payment Date on which such Preferred Dividend Accrual Period ends, shall be classified as "accumulated dividends" and shall remain "accumulated and unpaid dividends" until paid or otherwise canceled pursuant to this Restated Certificate. Dividends on each share of Preferred Stock shall accrue pursuant to this Section 2(a) from and including the Original Issuance Date to and including the date the Liquidation Preference on such share is paid in full, such share is redeemed in full and all accrued but unpaid dividends thereon are also paid in full, or such share is fully converted into Common Stock pursuant to Section 3 below. Upon conversion of any Preferred Stock into Common Stock, all accrued and unpaid dividends on such Preferred Stock shall be canceled. All payments due under this Section to any holder of shares of Preferred Stock shall be made to the nearest cent. The dividends payable with respect to the Preferred Stock on each shall be paid to the holders of shares of the Preferred Stock as they appear on the stock records of the Corporation on such date (the "Preferred Record Date") as shall be fixed by the Board of Directors, which Preferred Record Date shall not be more than 60 days prior to the applicable Preferred Dividend Payment Date and shall not precede the date upon which the resolution fixing such Preferred Record Date is adopted.

So long as any shares of the Preferred Stock are outstanding, except for repurchases and redemptions of Common Stock and Common Stock Equivalents pursuant to the terms and provisions of the Restricted Stock Agreements and the Equity Incentive Plans that are permitted to be made without the consent of the Requisite Preferred Holders pursuant to the Stockholders Agreement, and except for repurchases and redemptions of Series A-1 Preferred Stock and Series A-2 Preferred Stock and Common Stock pursuant to the terms and provisions of Section C.5 and E.1(f) of Article IV of this Restated Certificate or Article V of the Stockholders Agreement, as applicable, the Corporation shall not pay or declare or set apart for payment any dividend or make any other distribution or other payment on or with respect to the Common Stock or any class or series of stock of the Corporation ranking on a parity with or junior to the Preferred Stock with respect to dividends or redeem, repurchase or otherwise acquire any such stock unless the Corporation has paid, or at the same time pays, all unpaid dividends on the Preferred Stock pursuant to this Section 2(a) that have accrued through the date of the most recent fiscal quarter of the Corporation.

No dividend or distribution shall be paid to the holders of Series A-1 Preferred Stock or Series A-2 Preferred Stock pursuant to this Section 2(a) in any form of consideration other than cash unless the Requisite Preferred Holders at the time of the distribution, approve such distribution (including the valuation of the consideration being distributed).

Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Preferred Stock, such payment shall be distributed ratably among the holders of the Preferred Stock based upon the number of shares of the Preferred Stock held by each such holder.

(b) Participating Dividends.

In addition to all dividends payable pursuant to Section 2(a), whenever the Corporation shall declare or pay any dividends on its Common Stock, the holders of Preferred Stock shall be entitled to participate in such dividends on a ratable basis based upon the Common Stock Equivalents represented by such Preferred Stock; provided, however that this Section 2(b) shall not apply to repurchases or payments under the Restricted Stock Agreements or the Equity Incentive Plans. Dividends payable pursuant to this Section 2(b) shall not reduce any dividends payable pursuant to Section 2(a).

3. Liquidation.

In the event of any Liquidation, the holders of shares of Preferred Stock then outstanding shall be entitled to receive out of the assets of the Corporation legally available for distribution to its stockholders before any payment shall be made to the holders of any stock ranking on Liquidation junior to the Preferred Stock (with respect to rights on Liquidation, the Preferred Stock shall rank senior to the Common Stock), an amount per share equal to the greater of the Original Cost of such share plus an amount equal to all accrued and unpaid dividends (whether or not declared) on each share, if any, to the date of payment and the amount such holder would have received, if, immediately prior to such Liquidation such holder had converted all of such holder's shares of Preferred Stock into Common Stock (the "Preferred Liquidation Preference"). If, upon any Liquidation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of the Preferred Stock the full amounts to which they respectively shall be entitled, the holders of shares of Preferred Stock shall share ratably in any distribution of assets according to the respective amounts which would be payable with 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. In the event of any Liquidation, after payment shall have been made to the holders of shares of Preferred Stock in the full amount to which they are entitled, the holders of shares of capital stock ranking junior to the Preferred Stock on Liquidation shall be entitled, to the exclusion of the holders of the Preferred Stock, to share, according to their respective rights and preferences, in all remaining assets of the Corporation available for distribution to its stockholders. Anything contained in this Section to the contrary notwithstanding, each holder of shares of Preferred Stock shall have the right to convert all or any part of the shares of Preferred Stock held by such holder as herein provided into shares of Common Stock pursuant to this Article IV.

4. Conversion.

(a) Conversion of Preferred Stock into Preferred Stock.

(i) Subject to and in compliance with the applicable provisions of this Article IV, any Regulated Stockholder shall be entitled, without the payment of any additional consideration, to convert at any time and from time to time any or all shares of Series A-1 Preferred Stock held by such Regulated Stockholder into the same number of fully paid and nonassessable shares of Series A-2 Preferred Stock.

(ii) Subject to and in compliance with the applicable provisions of this Article IV, any holder of shares of Series A-2 Preferred Stock shall be entitled, without the payment of any additional consideration, to convert at any time and from time to time any or all

shares of Series A-2 Preferred Stock held by such holder into the same number of fully paid and nonassessable shares of Series A-1 Preferred Stock; provided, however, that Series A-2 Preferred Stock constituting Restricted Stock with respect to a particular Regulated Stockholder may not be converted into Series A-1 Preferred Stock to the extent that, immediately prior thereto, or as a result of such conversion, the number of shares of voting Securities which constitute such Restricted Stock held by all holders thereof would exceed the number of shares of voting securities which such Regulated Stockholder reasonably determines it and its Affiliates may own, control or have the power to vote under any law, regulation, rule or other have the requirement of any governmental authority at the time applicable to such Regulated Stockholder or its Affiliates; provided, further, that any holder that is not a "U.S. citizen" as such term is defined in 49U.S.C. §40102(a)(15) (each a "Foreign Investor") may not convert its Series A-2 Preferred Stock into Series A-1 Preferred Stock (a) without giving written notice to each other Foreign Investor at least 10 days prior to such conversion and (b) if such conversion would, in the opinion of the Corporation's regulatory counsel cause the Corporation to violate 49U.S.C. §40102(a)(15); and, provided, further, however, that notwithstanding the immediately preceding provision, each holder of Series A-2 Preferred Stock may convert such shares into Series A-1 Preferred Stock if such holder reasonably believes that such converted shares will be transferred with fifteen (15) days pursuant to a Conversion Event and such holder agrees not to vote any such shares of Series A-1 Preferred Stock prior to such Conversion Event and undertakes to promptly convert such shares back into Series A-2 Preferred Stock if such shares are not transferred pursuant to a Conversion Event. Each Regulated Stockholder may provide further restrictions upon the conversion of any shares of Preferred Stock which constitute Restricted Stock by providing the Corporation with signed, written instructions specifying such additional restrictions and legending such shares as to the existence of such restrictions.

(iii) Notwithstanding any provision of clause (ii) of this Section 4(a) to the contrary, each holder of Series A-2 Preferred Stock shall be entitled to convert shares of Series A-2 Preferred Stock into Series A-1 Preferred Stock in connection with any Conversion Event if such holder reasonably believes that such Conversion Event will be consummated, and a written request for conversion from any holder of Series A-2 Preferred Stock to the Corporation stating such holder's reasonable belief that a Conversion Event shall occur shall be conclusive and shall obligate the Corporation to effect such conversion in a timely manner so as to enable each such holder to participate in such Conversion Event. The Corporation will not cancel the shares of Series A-2 Preferred Stock so converted before the 15th day following such Conversion Event and will reserve such shares until such 15th day for reissuance in compliance with the next sentence. If any shares of Series A-2 Preferred Stock are converted into shares of Series A-1 Preferred Stock in connection with a Conversion Event and such Conversion Event does not actually occur, such shares of Series A-1 Preferred Stock shall be promptly converted back into the same number of shares of Series A-2 Preferred Stock.

(b) Optional Conversion of Preferred Stock into Common Stock.

Subject to and in compliance with the applicable provisions of this Article IV, each holder of shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock shall have the right, at such holder's option, at any time and from time to time, to convert any such share into that number of fully paid and nonassessable shares of Class A-1 Common Stock or Class A-2 Common Stock, respectively, equal to the quotient obtained by dividing (x) the Original Cost of

such share of Preferred Stock, by (y) the Conversion Price, as last adjusted and then in effect, by surrender of the certificates representing such share to be converted. The conversion price per share at which shares of Class A-1 Common Stock or Class A-2 Common Stock shall be issuable upon conversion of shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock (the "Conversion Price") shall initially be equal to the Original Cost of such share of Series A-1 Preferred Stock or Series A-2 Preferred Stock, and shall be subject to adjustment from time to time as set forth in paragraph (d) below. The Corporation shall give the Preferred Holders reasonable prior notice of a Sale Of The Corporation, including the price and material terms and conditions thereof, in order to provide the Preferred Holders reasonable opportunity to consider whether to convert the Preferred Stock into Common Stock at or prior to such Sale Of The Corporation. If the price or material terms or conditions of such transaction thereafter change, the Corporation shall promptly deliver written notice to the Preferred Holders specifying such changes.

(c) Mandatory Conversion of Preferred Stock into Common Stock.

Upon the occurrence of a Mandatory Conversion Event, (i) all shares of Series A-1 Preferred Stock then outstanding shall, by virtue of, and simultaneously with, the occurrence of such Mandatory Conversion Event and without any action on the part of the holders thereof, be deemed automatically converted into that number of fully paid and nonassessable shares of Class A-1 Common Stock into which such shares would have been convertible in the event of optional conversion at such time pursuant to Section (b) above, and (ii) all shares of Series A-2 Preferred Stock then outstanding shall, by virtue of, and simultaneously with, the occurrence of such Mandatory Conversion Event and without any action on the part of the holders thereof, be deemed automatically converted into that number of fully paid and nonassessable shares of Class A-2 Common Stock into which such shares would have been convertible in the event of optional conversion at such time pursuant to Section (b) above.

(d) Adjustment of Conversion Price.

Except in the case of Excess Issuances by the Corporation, the Conversion Price shall be subject to adjustment from time to time as follows:

(i) If the Corporation shall, at any time or from time to time after the Original Issuance Date, issue any shares of Common Stock (other than Excluded Securities) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Common Stock, then the Conversion Price in effect immediately prior to each such issuance shall forthwith be lowered to a price equal to the quotient obtained by dividing:

(A) an amount equal to the sum of (x) the total number of shares of Common Stock outstanding (including any shares of Common Stock deemed to have been issued pursuant to subdivision (C) of clause (ii) below) immediately prior to such issuance, multiplied by the Conversion Price in effect immediately prior to such issuance, and (y) the consideration received by the Corporation upon such issuance; by

(B) the total number of shares of Common Stock outstanding (including any shares of Common Stock deemed to have been issued pursuant to subdivision (C) of clause (ii) below) immediately after the issuance of such Common Stock.

(ii) For the purposes of any adjustment of the Conversion Price pursuant to clause (i) above, the following provisions shall be applicable:

(A) In the case of the issuance of Common Stock for cash in a public offering or private placement, the consideration shall be deemed to be the amount of cash paid therefor after deducting therefrom any discounts, commissions or placement fees payable by the Corporation to any underwriter or placement agent in connection with the issuance and sale thereof.

(B) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the Market Price thereof.

(C) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options to purchase or rights to subscribe for such convertible or exchangeable securities:

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subdivisions (A) and (B) above), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities, options, or rights were issued and for a consideration equal to the consideration received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in

each case to be determined in the manner provided in subdivisions (A) and (B) above);

(3) on any change in the number of shares or exercise price of Common Stock deliverable upon exercise of any such options or rights or conversions of or exchange for such securities, other than a change resulting from the antidilution provisions thereof, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon the issuance of such options, rights or securities not converted prior to such change or options or rights related to such securities not converted prior to such change been made upon the basis of such change; and

(4) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have 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 and subsequent conversion or exchange thereof.

(iii) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, following the record date for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up (or if no record date is set, the date such stock dividend, subdivision or stock split is consummated), the Conversion Price shall be appropriately decreased so that the number of shares of (x) Class A-1 Common Stock issuable on conversion of each share of Series A-1 Preferred Stock or (y) Class A-2 Common Stock issuable on conversion of each share of Series A-2 Preferred Stock shall, in each case, be increased in proportion to such increase in outstanding shares.

(iv) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is decreased by a combination of the outstanding shares of Common Stock, then, following the record date for such combination, the Conversion Price shall be appropriately increased so that the number of shares of (x) Class A-1 Common Stock issuable on conversion of each share of Series A-1 Preferred Stock or (y) Class A-2 Common Stock issuable on conversion of each share of Series A-2 Preferred Stock shall, in each case, be decreased in proportion to such decrease in outstanding shares.

(v) In the event of any capital reorganization of the Corporation, any reclassification of the stock of the Corporation (other than a change in par value or from no par value to par value or from par value to no par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or any consolidation or merger of the Corporation, each share of Series A-1 Preferred Stock and Series A-2 Preferred Stock shall after such reorganization, reclassification, consolidation, or merger be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the corporation resulting from such consolidation or surviving such merger to which the holder of the number of shares of Class A-1 Common Stock or Class A-2 Common Stock deliverable (immediately prior to the time of such reorganization, reclassification, consolidation or merger) upon conversion of such share of Series A-1 Preferred Stock or Series A-2 Preferred Stock would have been entitled upon such reorganization, reclassification, consolidation or merger. The provisions of this clause shall similarly apply to successive reorganizations, reclassifications, consolidations or mergers.

(vi) If any event occurs of the type contemplated by the provisions of this Paragraph 4(d) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features, but excluding any issuance of Common Stock or Common Stock Equivalents pursuant to an Equity Incentive Plan), then the Corporation's Board of Directors shall make an appropriate reduction in the Conversion Price so as to protect the rights of the holders of the Preferred Stock.

(vii) All calculations under this paragraph shall be made to the nearest one hundredth (1/100) of a cent.

(viii) In any case in which the provisions of this paragraph (d) shall require that an adjustment shall become effective immediately after a record date of an event, the Corporation may defer until the occurrence of such event (i) issuing to the holder of any share of Series A-1 Preferred Stock or Series A-2 Preferred Stock converted after such record date and before the occurrence of such event the shares of capital stock issuable upon such conversion by reason of the adjustment required by such event in addition to the shares of capital stock issuable upon such conversion before giving effect to such adjustments, and (ii) paying to such holder any amount in cash in lieu of a fractional share of capital stock pursuant to paragraph (c) above; provided, however, that the Corporation shall deliver to such holder an appropriate instrument evidencing such holder's right to receive such additional shares and such cash.

(ix) Whenever the Conversion Price shall be adjusted as provided in this paragraph (d), the Corporation shall make available for inspection during regular business hours, at its principal executive offices or at such other place as may be designated by the Corporation, a statement, signed by its chief executive officer, showing in detail the facts requiring such adjustment and the Conversion Price that shall be in effect after such adjustment. The Corporation shall also cause a copy of such statement to be sent by first class certified mail, return receipt requested and postage prepaid, to each holder of Series A-1 Preferred Stock and Series A-2 Preferred Stock at such holder's address appearing on

the Corporation's records. Where appropriate, such copy may be given in advance and may be included as part of any notice required to be mailed under the provisions of paragraph (x) below.

(x) If the Corporation shall propose to take any action of the types described in clauses (iii), (iv) or (v) of this paragraph (d) above, the Corporation shall give notice to each holder of shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock, in the manner set forth in paragraph (ix) above, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least 10 days prior to the date so fixed, and in case of all other action, such notice shall be given at least 10 days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(xi) In the event that the Requisite Preferred Holders consent in writing to limit, or waive in its entirety, any anti-dilution adjustment to which the holders of the Preferred Stock would otherwise be entitled hereunder, the Corporation shall not be required to make any adjustment whatsoever with respect to any Preferred Stock in excess of such limit or at all, as the terms of such consent may dictate.

5. Redemption.

(a) Redemption at Holder's Option.

At any time on or after the fifth anniversary of the filing of this Restated Certificate, at the request of the Requisite Preferred Holders, each holder of Preferred Stock may elect to have the Corporation redeem any or all of such holder's shares of Preferred Stock at a price per share equal to the Original Cost thereof plus all accrued and unpaid dividends thereon by giving written notice to the Corporation of such election (the "Investor Notice of Election"), whereupon the Corporation shall be obligated to repurchase such shares of Preferred Stock in the following manner: The Corporation shall repurchase one-sixteenth of each electing holder's aggregate number of shares of Preferred Stock at each of sixteen (16) closings conducted on sixteen (16) dates beginning on the date of the Investor Notice of Election (each, an "Investor Redemption Date") as shall be determined by the Corporation, but in any event not earlier than 10 days and not later than 120 days after the date on which the Investor Notice of Election is delivered to the Corporation and each subsequent Investor Redemption Date shall be not earlier than 80 days and not later than 100 days after the immediately preceding Investor Redemption Date. Shares of Preferred Stock which have not yet been repurchased by the Corporation on an Investor Redemption Date shall be deemed outstanding for all purposes of this Restated Certificate.

(b) Redemption Closing.

(i) The closing of the Corporation's redemption of each sixteenth of the Series A-1 Preferred Stock or Series A-2 Preferred Stock, as the case may be, pursuant to Section 5(a) above shall take place at 11:00 a.m. New York City time on the applicable Investor Redemption Date, at the Corporation's principal executive office or place of business. Promptly (but in no event later than five days) after the delivery of the Investor Notice of Election to the Corporation, the Corporation shall send written notice (the "Redemption Notice") to each of the holders of the Preferred Stock. The Redemption Notice shall specify each of the sixteen Investor Redemption Dates and the location of the Corporation's principal executive office or place of business where the closing will occur. At the closing, the Corporation shall pay to each of the holders of the Preferred Stock, against the Corporation's receipt from such holder of the certificate or certificates representing one-sixteenth of the aggregate shares of such series of Preferred Stock elected by such holder to be redeemed, an amount equal to the aggregate payment due pursuant to Section 5(a), as applicable, for all such shares, by wire transfer of immediately available funds, or if such holder shall not have specified wire transfer instructions to the Corporation prior to the closing, by certified or official bank check made payable to the order of such holder.

(ii) In the event that, on any Investor Redemption Date, with respect to a redemption pursuant to Section 5(a) above, the Corporation shall not have sufficient funds on hand and after using its best efforts cannot obtain such funds from third party financing sources on reasonable and customary terms to pay in full in cash the aggregate payment due on such Investor Redemption Date pursuant to Section 5(a), then the Corporation shall pay in cash the maximum amount thereof possible and thereby redeem the maximum number of shares in accordance with clause (b)(iii) below, and the unredeemed balance of such shares shall remain outstanding and subject to all the terms of this Restated Certificate.

(iii) If the funds of the Corporation legally available for redemption of shares of Preferred Stock on any Investor Redemption Date are insufficient to redeem the total number of such shares to be redeemed on such date (or after such date pursuant to clause (ii) above), those funds which are legally available shall be used to redeem the maximum possible number of shares ratably among the holders of such shares based upon the aggregate number of such shares held by each such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares, such funds shall immediately be used to redeem the balance of the shares which the Corporation has become obligated to redeem on any Investor Redemption Date but which it had not redeemed.

(iv) No shares of Preferred Stock are entitled to any dividends accruing after the date on which the full redemption price for such share is paid to the holder thereof. On such date all rights of the holder of such share shall cease, and such share shall not be deemed to be outstanding.

(v) Anything contained in this Section 4 to the contrary notwithstanding, the outstanding shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock shall

remain subject to optional or mandatory conversion pursuant to Article IV hereof at all times up to the Investor Redemption Date at which such shares are redeemed.

D. Common Stock.

Except for and subject to those rights expressly granted to the holders of the Preferred Stock, and except as otherwise provided herein or as may otherwise be provided by Applicable Law, the holders of Common Stock shall have exclusively all other rights of stockholders, including (i) the right to receive dividends, when and as declared by the Board of Directors of the Corporation out of assets legally available therefor, and (ii) in the event of any distribution of assets upon a Liquidation or otherwise, the right to receive ratably and equally all the assets and funds of the Corporation remaining after the payment to the holders of shares of Preferred Stock of the specific amounts which they are entitled to receive upon such Liquidation as herein provided.

1. Voting Rights.

(a) Class A-1 Common Stock.

Except as set forth herein or as otherwise required by law, each outstanding share of Class A-1 Common Stock shall be entitled to vote on each matter on which the stockholders of the Corporation shall be entitled to vote, and each holder of Class A-1 Common Stock shall be entitled to one vote for each share of such stock held by such holder. Except as otherwise provided herein or by law, the Class A-1 Common Stock shall possess full and complete voting power for the election of directors.

(b) Class A-2 Common Stock.

Except as set forth herein or as otherwise required by law, each outstanding share of Class A-2 Common Stock shall not be entitled to vote on any matter on which the stockholders of the Corporation shall be entitled to vote, and shares of Class A-2 Common Stock shall not be included in determining the number of shares voting or entitled to vote on any such matters; provided, however, that the holders of Class A-2 Common Stock shall have the right to vote as a separate class on any merger or consolidation of the Corporation with or into another entity or entities, or any recapitalization or reorganization, in which shares of Class A-2 Common Stock would receive or be exchanged for consideration different on a per share basis from consideration received with respect to or in exchange for the shares of Class A-1 Common Stock or would otherwise be treated differently from shares of Class A-1 Common Stock in connection with such transaction, except that shares of Class A-2 Common Stock may, without such a separate class vote, receive or be exchanged for non-voting securities which are otherwise identical on a per share basis in amount and form to the voting securities received with respect to or exchanged for the Class A-1 Common Stock so long as (i) such non-voting securities are convertible into such voting securities on the same terms as the Class A-2 Common Stock is convertible into Class A-1 Common Stock and (ii) all other consideration is equal on a per share basis. Notwithstanding the foregoing, holders of shares of the Class A-2 Common Stock shall be entitled to vote as a separate class on any amendment to this paragraph (b) and on any

amendment, repeal or modification of any provision of this Restated Certificate that adversely affects the powers, preferences or special rights of the holders of the Class A-2 Common Stock.

2. Dividends and Distributions.

Any dividend or distribution on the Common Stock shall be payable on shares of Class A-1 Common Stock and Class A-2 Common Stock, share and share alike; provided, however, that (i) in the case of dividends or distributions payable in shares of Common Stock of the Corporation, or options, warrants or rights to acquire shares of such Common Stock, or securities convertible into or exchangeable for shares of such Common Stock, the shares, options, warrants, rights or securities so payable shall be payable in shares of, or options, warrants or rights to acquire, or securities convertible into or exchangeable for, Common Stock of the same class upon which the dividend or distribution is being paid and (ii) if such dividends or distributions consist of other voting securities of the Corporation, the Corporation shall make available to each holder of Class A-2 Common Stock, at such holder's request, dividends or distributions consisting of non-voting securities of the Corporation which are otherwise identical to the voting securities and which are convertible into or exchangeable for such voting securities on the same terms as the Class A-2 Common Stock is convertible into the Class A-1 Common Stock.

3. Liquidation.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and the preferences on the outstanding Preferred Stock, the holders of shares of Class A-1 Common Stock and Class A-2 Common Stock shall be entitled to share ratably, share and share alike, in the remaining net assets of the Corporation.

4. Conversion.

(a) Conversion of Class A-1 into Class A-2 Common Stock.

Subject to and upon compliance with the provisions hereof, any Regulated Stockholder shall be entitled to convert, at any time and from time to time, any or all of the shares of Class A-1 Common Stock held by such stockholder into the same number of shares of Class A-2 Common Stock.

(b) Conversion of Class A-2 into Class A-1 Common Stock.

(i) Subject to and upon compliance with the provisions hereof, each record holder of Class A-2 Common Stock shall be entitled at any time and from time to time in such holder's sole discretion and at such holder's option, to convert any or all of the shares of such holder's Class A-2 Common Stock into the same number of shares of Class A-1 Common Stock; provided, however, that Class A-2 Common Stock constituting Restricted Stock with respect to a particular Regulated Stockholder may not be converted into Class A-1 Common Stock to the extent that, immediately prior thereto, or as a result of such conversion, the number of shares of voting Securities which constitute such Restricted Stock held by all holders thereof

would exceed the number of shares of voting Securities which such Regulated Stockholder reasonably determines it and its Affiliates may own, control or have the power to vote under any law, regulation, rule or other requirement of any governmental authority at the time applicable to such Regulated Stockholder or its Affiliates; provided, further, that any holder that is a Foreign Investor may not convert its Class A-2 Common Stock into Class A-1 Common Stock (a) without giving written notice to each other Foreign Investor at least 10 days prior to such conversion and (b) if such conversion would, in the opinion of the Corporation's regulatory counsel, cause the Corporation to violate 49U.S.C. §40102(a)(15); and, provided further, however, that each holder of Class A-2 Common Stock may convert such shares into Class A-1 Common Stock if such holder reasonably believes that such converted shares will be transferred within fifteen (15) days pursuant to a Conversion Event and such holder agrees not to vote any such shares of Class A-1 Common Stock prior to such Conversion Event and undertakes to promptly convert such shares back into Class A-2 Common Stock if such shares are not transferred pursuant to a Conversion Event. Each Regulated Stockholder may provide for further restrictions upon the conversion of any shares of Common Stock which constitute Restricted Stock by providing the Corporation with signed, written instructions specifying such additional restrictions and legending such shares as to the existence of such restrictions.

(ii) Notwithstanding any provision of this Section 4(b) to the contrary, each holder of Class A-2 Common Stock shall be entitled to convert shares of Class A-2 Common Stock in connection with any Conversion Event if such holder reasonably believes that such Conversion Event will be consummated, and a written request for conversion from any holder of Class A-2 Common Stock to the Corporation stating such holder's reasonable belief that a Conversion Event shall occur shall be conclusive and shall obligate the Corporation to effect such conversion in a timely manner so as to enable each such holder to participate in such Conversion Event. The Corporation will not cancel the shares of Class A-2 Common Stock so converted before the 15th day following such Conversion Event and will reserve such shares until such 15th day for reissuance in compliance with the next sentence. If any shares of Class A-2 Common Stock are converted into shares of Class A-1 Common Stock in connection with a Conversion Event and such Conversion Event does not occur, such shares of Class A-1 Common Stock shall be promptly converted back into the same number of shares of Class A-2 Common Stock.

E. Miscellaneous.

1. Conversion Procedures.

(a) Mechanics.

Each conversion of shares of any class of capital stock of the Corporation into shares of another class of capital stock of the Corporation shall be effected by the surrender of the certificate or certificates representing the shares to be converted (the "Converting Shares") at the principal office of the Corporation (or such other office or agency of the Corporation as the Corporation may designate by written notice to the holders of such class of capital stock) at any time during its usual business hours, together with written notice by the holder of such Converting Shares, stating that such holder desires to convert the Converting Shares, or a stated

number of the shares represented by such certificate or certificates, into an equal number of shares of the class into which such shares may be converted (the "Converted Shares"). Such notice shall also state the name or names (with addresses) and denominations in which the certificate or certificates for Converted Shares are to be issued and shall include instructions for the delivery thereof. The Corporation shall promptly notify each Regulated Stockholder of its receipt of such notice. A Preferred Holder may make any such notice of conversion, whether such conversion is in connection with a Sale Of The Corporation or otherwise, conditional upon the happening of any event or the passage of such time as is specified by such Preferred Holder in such conversion notice, and may rescind any notice of conversion prior to the effective time thereof specified in any such notice. Promptly after such surrender and the receipt of such written notice of conversion, the Corporation will issue and deliver in accordance with the surrendering holder's instructions the certificate or certificates evidencing the Converted Shares issuable upon such conversion, and the Corporation will deliver to the converting holder a certificate (which shall contain such legends as were set forth on the surrendered certificate or certificates) representing any shares which were represented by the certificate or certificates that were delivered to the Corporation in connection with such conversion, but which were not converted; provided, however, that if such conversion is subject to a Deferral Period, the Corporation shall not issue such certificate or certificates until the expiration of the Deferral Period referred to therein. Such conversion, to the extent permitted by law, shall be deemed to have been effected as of the close of business on the date on which such certificate or certificates shall have been surrendered and such notice shall have been received by the Corporation, and at such time the rights of the holder of the Converting Shares as such holder shall cease (except that, in the case of a conversion subject to a Deferral Period, the conversion shall be deemed to be effective upon the expiration of the Deferral Period referred to therein) and the person or persons in whose name or names the certificate or certificates for the Converted Shares are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the Converted Shares. Upon issuance of shares in accordance with this Section, such Converted Shares shall be deemed to be duly authorized, validly issued, fully paid and non-assessable, with no personal liability attaching to the ownership thereof and free from all taxes, liens or charges with respect thereto due to any action of the Corporation. The Corporation shall take all such actions as may be necessary to assure that all such shares may be so issued without violation of any Applicable Law or any requirements of any domestic securities exchange upon which such shares may be listed (except for official notice of issuance which will be immediately transmitted by the Corporation upon issuance). The Corporation shall not close its books against the transfer of shares in any manner which would interfere with the timely conversion of any shares. The issuance of certificates for shares of any class of capital stock (upon conversion of shares of any other class of capital stock or otherwise) shall be made without charge to the holders of such shares for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and/or the issuance of such shares; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the shares converted. No fractional shares of Common Stock or scrip shall be issued upon conversion of any shares. The number of full shares issuable upon conversion shall be computed on the basis of the aggregate number of shares to be converted by a holder. Instead of any fractional shares which would otherwise be issuable upon conversion of Common Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal

to the product of (i) the price of one share of such Common Stock as determined in good faith by the Board and (ii) such fractional interest. The holders of fractional interests shall not be entitled to any rights as stockholders of the Corporation in respect of such fractional interests.

(b) Notice of Conversion to Other Regulated Stockholders: Deferral.

The Corporation shall not convert or directly or indirectly redeem, purchase or otherwise acquire any shares of Series A-1 Preferred Stock, Class A-1 Common Stock or any other class of capital stock of the Corporation or take any other action affecting the voting rights of such shares, if such action will increase the percentage of any class of outstanding voting securities owned or controlled by any Regulated Stockholder (other than any such stockholder which requested that the Corporation take such action, or which otherwise waives in writing its rights under this paragraph (b) of this Section (e)(1)), unless the Corporation gives written notice (the "Deferral Notice") of such action to each Regulated Stockholder. The Corporation will defer making any such conversion, redemption, purchase or other acquisition, or taking any such other action for a period of twenty (20) days (the "Deferral Period") after giving the Deferral Notice in order to allow each Regulated Stockholder to determine whether it wishes to convert or take any other action with respect to the Preferred Stock and/or Common Stock it owns, controls or has the power to vote, and if any such Regulated Stockholder then elects to convert any shares of Class A-1 Common Stock or Series A-1 Preferred Stock, it shall notify the Corporation in writing within ten (10) days of the issuance of the Deferral Notice, in which case the Corporation shall (i) promptly notify from time to time prior to the end of such 20-day period each other Regulated Stockholder holding shares of each proposed conversion, and (ii) effect the conversions requested by all Regulated Stockholders in response to the notices issued pursuant to this paragraph (b) of this Section (e)(1) at the end of the Deferral Period. Upon complying with the procedures hereinabove set forth in this paragraph (b) of this Section (e)(1), the Corporation may so convert or directly or indirectly redeem, purchase or otherwise acquire any shares of Class A-1 Common Stock or any other class of capital stock of the Corporation or take any other action affecting the voting rights of such shares.

(c) Reservation of Shares.

The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of each class of capital stock or its treasury shares, solely for the purpose of issuance upon the conversion of shares of any other class of capital stock hereunder, such number of shares of such class as are then issuable upon the conversion of all outstanding shares of such other class which may be converted.

(d) Registration of Transfer.

The Corporation shall keep at its principal office (or such other place as the Corporation reasonable designates) a register for the registration of shares of each class of its capital stock. Upon the surrender of any certificate representing shares of any class of capital stock at such place, the Corporation shall, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Corporation forthwith shall cancel such surrendered certificate. Each such new

certificate will represent such number of shares of such series as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. Subject to any other restrictions on transfer to which such holder or such shares may be bound, the Corporation will also register such new certificate in such name as requested by the holder of the surrendered certificate.

(e) **Replacement.**

Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of any class of capital stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided, however, that if the holder is a financial institution or other institutional investor, its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such number of shares of such series represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

(f) **Restrictions on Redemptions, Etc.**

The Corporation shall not redeem, purchase, acquire or take any other action affecting outstanding shares of any Series A-1 Preferred Stock or Class A-1 Common Stock if, after giving effect to such redemption, purchase, acquisition or other action, a Regulated Stockholder would own (i) more than 4.99% of any class of voting securities of the Corporation (other than any class of voting securities which is (or is made prior to any such redemption, purchase, acquisition or other action) convertible into a class of non-voting securities which are otherwise identical to the voting securities and convertible into such voting securities on terms reasonably acceptable to such Regulated Stockholder) or (ii) more than 24.99% of the total equity of the Corporation or more than 24.99% of the total value of all capital stock and subordinated debt of the Corporation (in each case determined by assuming such Regulated Stockholder (but no other holder) has exercised, converted or exchanged all of its options, warrants and other convertible or exchangeable securities).

(g) **Stock Splits, Stock Dividends, Etc.**

(i) The Corporation shall not in any manner subdivide (by stock split, stock dividend or otherwise) or combine (by reverse stock split or otherwise) the outstanding shares of any class of Preferred Stock or any class of Common Stock unless all such subdivisions and combinations shall be payable to the holder of shares of any class of capital stock of the Corporation only in shares of such class.

(ii) If the Corporation shall in any manner subdivide (by stock split, stock dividend or otherwise) or combine (by reverse stock split or otherwise) the outstanding shares of the Class A-1 Common Stock or the Class A-2 Common Stock, then the outstanding shares of each other class of Common Stock shall be subdivided or combined, as the case may be, to the same extent, share and share alike, and effective provision shall be made for the protection of the conversion rights hereunder. If the Corporation shall in any manner subdivide (by stock split,

stock dividend or otherwise) or combine (by reverse stock split or otherwise) the outstanding shares of the Series A-1 Preferred Stock or the Series A-2 Preferred Stock, then the outstanding shares of the other class of Preferred Stock shall be subdivided or combined, as the case may be, to the same extent, share and share alike, and effective provision shall be made for the protection of the conversion rights hereunder.

(iii) In case of any reorganization, reclassification or change of shares of any class of capital stock (other than a change in par value or from par to no par value or as a result of subdivision or combination), or in case of any consolidation of the Corporation with one or more corporations or a merger of the Corporation with another corporation (other than a consolidation or merger in which the Corporation is the resulting or surviving corporation and which does not result in any reclassification or change of outstanding shares of any class of capital stock), each holder of a share of any class of capital stock shall have the right at any time thereafter, so long as the conversion right hereunder with respect to such share would exist had such event not occurred, to convert such share into the kind and amount of shares of stock and other securities and properties (including cash) receivable upon such reorganization, reclassification, change, consolidation or merger by a holder of the number of shares of such class of capital stock into which such shares might have been converted immediately prior to such reorganization, reclassification, change, consolidation or merger. In the event of such reorganization, reclassification, change, consolidation or merger, effective provision shall be made in the certificate or incorporation of the resulting or surviving corporation or otherwise for the protection of the conversion rights of the shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock, Class A-1 Common Stock and Class A-2 Common Stock that shall be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion of such shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock, Class A-1 Common Stock or Class A-2 Common Stock into which such Series A-1 Preferred Stock, Series A-2 Preferred Stock, Class A-1 Common Stock or Class A-2 Common Stock might have been converted immediately prior to such event.

(h) Notices.

All notices referred to herein shall be in writing, shall be delivered personally or by first class mail, postage prepaid, and shall be deemed to have been given when so delivered or mailed to the Corporation at its principal executive offices and to any stockholder at such holder's address as it appears in the stock records of the Corporation (unless otherwise specified in a written notice to the Corporation by such holder).

ARTICLE V

EXCULPATION OF DIRECTORS

A director of the 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 any improper personal benefit. If the Delaware

General Corporation Law is amended after the date of the filing of this Restated Certificate to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph 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.

ARTICLE VI AMENDMENTS

Subject to the provisions of the Stockholders Agreement and this Restated Certificate, for so long as shares of Series A Preferred Stock are outstanding, the Corporation, with the consent of (i) the holders of a majority of the then outstanding shares of Class A-1 Common Stock held by Management Stockholders and (ii) the holders of $66\frac{2}{3}$ of the shares of Series A Preferred Stock, reserves the right to amend or repeal any provision contained in this Restated Certificate in the manner now or hereafter prescribed by statute, and all rights conferred upon Stockholders herein are granted subject to this reservation; provided however, that no amendment that affects the ability of any Regulated Stockholder to comply with Regulation Y shall not be effective without such Regulated Stockholder's consent; provided further, however that any such amendment, modification, or waiver that would adversely affect the rights hereunder of any Stockholder, in its capacity as a Stockholder, without similarly affecting the rights hereunder of all Stockholders of the same class, in their capacities as Stockholders of such class, shall not be effective as to such Stockholder without its prior written consent. When no shares of Series A Preferred Stock are outstanding, the Corporation, with the consent of a majority of the then outstanding shares of Common Stock, reserves the right to amend or repeal any provision contained in this Restated Certificate in the manner now or hereafter prescribed by statute, and all rights conferred upon Stockholders herein are granted subject to this reservation.

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, and subject to the provisions of the Stockholders Agreement, for so long as shares of Series A Preferred Stock are outstanding, the Board of Directors, with the consent of (i) the holders of a majority of the then outstanding shares of Common Stock held by Management Stockholders and (ii) the Requisite Preferred Holders, is expressly authorized and empowered to make, alter, amend or repeal the By-laws in any manner not inconsistent with the laws of the State of Delaware or this Restated Certificate; provided further, however that any such amendment, modification, or waiver that would adversely affect the rights hereunder of any Stockholder, in its capacity as a Stockholder, without similarly affecting the rights hereunder of all Stockholders of the same class, in their capacities as Stockholders of such class, shall not be effective as to such Stockholder without its prior written consent. When no shares of Series A Preferred Stock are outstanding, the Board of Directors, with the consent of a majority of the then outstanding shares of Common Stock, is expressly authorized and empowered to make, alter, amend or repeal the By-laws in any manner not inconsistent with the laws of the State of Delaware or this Restated Certificate.

ARTICLE VII

COMPROMISE OR ARRANGEMENT WITH CREDITORS

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or any class of creditors, and/or the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders, or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ARTICLE VIII

CERTAIN BUSINESS COMBINATIONS

The Corporation elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.