

02-11-2000

034319-006US3

MNP 1,10.00



To the Honorable Commissioner of Patents

101264512

original documents or copy thereof.

1. Name of conveying party(ies):

Executive Jet International, Inc.

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

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

2. Name and address of receiving party(ies):

Name: Executive Jet, Inc.

Internal Address:

Street Address: 625 N. Hamilton Road

City: Columbus State: OH Zip: 43219

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

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3. Nature of conveyance:

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

Execution Date: September 12, 1995

If assignee is not domiciled in the United States, assignee's representative designation is attached: Yes No

Designation must be a separate document from Assignment. Additional name(s) and address(es) attached: Yes No

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

A. Trademark Application No.(s)

B. Trademark registration No.(s)

1,545,644

Additional numbers attached? Yes No

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

Name: Mark P. Levy

Internal Address: Thompson Hine & Flory LLP

Street Address: 2000 Courthouse Plaza N.E.
P.O. Box 8801

City: Dayton State: Ohio Zip: 45401-8801

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: 20-0809

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

DO NOT USE THIS SPACE

9. Statement and signature:

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

Mark P. Levy

Name of Person Signing
Reg. No. 27,922

Signature

Date

1/7/00

Total Number of pages comprising cover sheet:

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

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Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information System, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

GT-07

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RESTATED CERTIFICATE OF INCORPORATION
OF
EXECUTIVE JET INTERNATIONAL, INC.

Under Section 807 of the Business Corporation Law

We, the undersigned, Jerold B. Friedman and David Orlinsky being, respectively, the Executive Vice President and Assistant Secretary of EXECUTIVE JET INTERNATIONAL, INC. (the "Corporation"), do hereby certify:

1. The name of the Corporation is Executive Jet International, Inc. The name under which the Corporation was originally formed is Fitzhara Leasing Corp.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on December 20, 1983.
3. The Certificate of Incorporation is amended to effect certain amendments authorized by the Business Corporation Law of the State of New York. In particular, the text of the Certificate of Incorporation is amended (i) to change the name of the Corporation to Executive Jet, Inc., (ii) to change the purposes for which the Corporation is formed, (iii) to delete the powers formerly granted to the holders of certain convertible notes, (iv) to change the address where process against the Corporation is to be mailed, (v) to change the authorized share capital of the Corporation and the terms of the authorized shares, and (vi) to broaden the scope of the limitation of liability of the Corporation's directors and certain other persons.
4. The text of the Certificate of Incorporation is hereby restated as so amended to read in its entirety as follows:

FIRST: The name of the Corporation shall be Executive Jet, Inc.

SECOND: The purposes for which the Corporation is formed are as follows:

To engage in any lawful act or activity for which a corporation may be organized under the Business Corporation Law of the State of New York, provided that the Corporation is not formed to engage in any act or activity which requires the consent or approval of any state official, department, board, agency or other body without such approval or consent first being obtained.

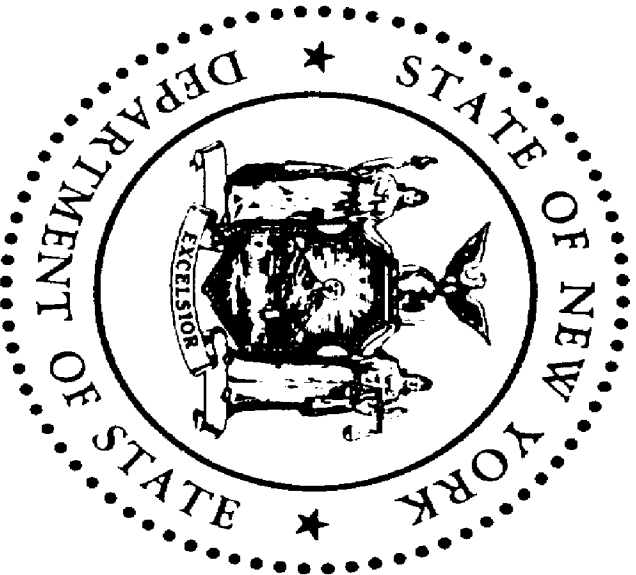
To do all and everything necessary, suitable, convenient or proper for the accomplishment of the purposes or the attainment of any one or more of the objects herein enumerated, or incidental to

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State of New York }
Department of State }
SS:

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

Witness my hand and seal of the Department of State on **OCT 14 1999**



A handwritten signature in black ink, appearing to read "J. Clark", is written over a horizontal line.

Special Deputy Secretary of State

the powers herein named, or which at any time appear conducive or expedient for the protection or benefit of the Corporation either as holder of, or as interested party in, any property or otherwise, with all the powers now or hereafter conferred by the laws of the State of New York upon corporations incorporated thereunder and by virtue thereof.

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumerations of specific powers shall not be held to limit or restrict in any manner the powers of this Corporation.

THIRD: The office of the Corporation shall be located in the County of New York, State of New York.

FOURTH: The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom all process in any action or proceeding against the Corporation may be served. The address to which the Secretary of State shall mail a copy of such process against the Corporation is David Orlinsky, Esq., 103 West 89th Street, New York, NY 10024.

FIFTH:

1. Authorized Capital. The total number of shares of all classes of capital stock which the Corporation has authority to issue is 53,000 shares, consisting of (i) 2,000 shares of Common Stock, par value \$.01 per share (the "Common Stock"), and (ii) 51,000 shares of Preferred Stock, par value \$.01 per share (the "Preferred Stock").

2. Terms of the Common Stock.

2.1 Dividends. Subject to the rights of the Preferred Stock described in Section 3.2 of this Article Fifth, dividends may be paid on the Common Stock as and when declared by the Board of Directors of the Corporation (the "Board"). Dividends payable in shares of Common Stock or Junior Stock (as defined in Section 3.11 below) can be paid or set apart for payment to holders of Common Stock or Junior Stock.

2.2 Voting Rights. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held. Except as required by law, or as otherwise set forth in this Article Fifth, the holders of shares of Series A Preferred Stock (as defined in Section 3.1 below) and Common Stock shall vote together as a

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single class and not as separate classes. The holders of the Common Stock shall vote together as a class to elect all the members of the Board (the "Common Directors") other than the number of directors entitled to be elected by the holders of Series A Preferred Stock pursuant to Section 3.3(b).

2.3 Liquidation Rights. Subject to the rights of the holders of the Preferred Stock described in Section 3.5 of this Article Fifth and any other prior and/or superior rights of such holders as provided by law, upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of Common Stock shall be entitled to receive that portion of any remaining funds and other assets of the Corporation to be distributed. Such funds and other assets shall be distributed to holders of the Common Stock on a ratable basis.

2.4 Fractional Shares. A fractional share of Common Stock shall be entitled to an equivalent fractional percentage of all of the rights and privileges associated with a whole share of such Common Stock. Any reference to a share of Common Stock in this Restated Certificate of Incorporation shall be a reference to a whole or fractional share, as applicable, of Common Stock.

2.5 Conversion. No holder of Common Stock shall have the right to convert such shares into any other class of stock of the Corporation.

3. Terms of the Preferred Stock.

3.1 Designation and Number. There is hereby designated a series of Preferred Stock to be known as Series A Convertible Redeemable Preferred Stock and hereinafter referred to as "Series A Preferred Stock," and a series of Preferred Stock to be known as Series B Preferred Stock and hereinafter referred to as "Series B Preferred Stock." The number of shares constituting the Series A Preferred Stock shall be 875 and the number of shares constituting the Series B Preferred Stock shall be 50,125.

3.2 Dividends. (a)(i) The holders of shares of Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board out of the assets of the Corporation legally available therefor, cumulative cash dividends in an annual amount per share of Series B Preferred Stock equal to the Dividend Amount (as defined below) payable semi-annually on the last Business Day of April and

October in each fiscal year (each such date being referred to herein as a "Dividend Payment Date"), commencing on the first Dividend Payment Date following the date of issuance of the Series B Preferred Stock. The "Dividend Amount" shall be an amount equal to the lesser of (A) \$3.99 and (B) the quotient obtained by dividing (I) the consolidated net income of the Corporation and its subsidiaries for the prior fiscal year by (II) 50,125. Notwithstanding the foregoing, cash dividends equal to \$.50 per share of Series B Preferred Stock shall be payable on the last day of October 1995 (which represents the pro rata accrued dividends for half of the month of September and the full month of October).

(ii) Dividends payable pursuant to paragraph (a) of this Section 3.2 shall begin to accrue and be cumulative from the date of issuance of the Series B Preferred Stock, whether or not earned or declared. Accumulated dividends on the shares of Series B Preferred Stock shall not bear interest. No dividend or distribution, whether in cash, stock (other than shares of Common Stock or Junior Stock) or other property, shall be paid or declared or set apart for payment in respect of the Common Stock or any class of stock of the Corporation hereafter authorized ranking junior to the Series B Preferred Stock as to the payment of dividends or the distribution of assets upon dissolution, liquidation or winding-up and no shares of Common Stock or Junior Stock shall be purchased, redeemed or otherwise acquired for value by the Corporation, unless, at the date of such declaration, distribution, other payment, purchase, redemption or other acquisition, all accumulated dividends on the then outstanding shares of Series B Preferred Stock for all past dividend periods and the then current dividend period shall have been paid or declared and set apart for payment in full.

(b) The holders of shares of Series A Preferred Stock shall be entitled to receive dividends equivalent on a per share basis to any dividends received by the holders of Common Stock, based upon the number of shares of Common Stock into which such shares of Series A Preferred Stock could be converted pursuant to the provisions of Section 3.6 of this Article Fifth, at the record date for the determination of shareholders entitled to such dividends.

3.3 Voting Rights. (a) In addition to any voting rights provided by law, the holder of each share of Series A Preferred Stock shall be entitled to vote on all matters and shall be entitled to the number of votes equal to the number of votes a holder of the shares of Common Stock into which such share of Series A

Preferred Stock is convertible pursuant to Section 3.6 of this Article Fifth is entitled to, at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited; provided, however, that the holders of Series A Preferred Stock shall not be entitled to vote on any matters relating to the election of the Common Directors. The holders of Series A Preferred Stock shall be entitled to vote as a class to elect the Series A Directors (as defined below) in accordance with Section 3.3(b).

(b) The holders of Series A Preferred Stock shall be entitled to vote as a class to elect persons to serve as directors of the Corporation as follows: the holders of Series A Preferred Stock shall be entitled to vote as a class to elect (i) two (2) persons to the Board for so long as the number of members of the Board shall be six (6) or more and (ii) only one (1) person to the Board for so long as the number of members of the Board shall be five (5) or less; provided, however, if the Corporation fails to redeem all of the shares of Series A Preferred Stock in accordance with Section 3.7 of this Article Fifth, the holders of Series A Preferred Stock shall be entitled to elect a number of persons to the Board equal to a majority of the maximum number of directors of which the Board may be comprised pursuant to the By-Laws of the Corporation then in effect. Each person elected to be a director by the holders of Series A Preferred Stock pursuant to this Section 3.3(b) shall be referred to as a "Series A Director."

(c) At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of Series A Preferred Stock then outstanding shall constitute a quorum for the purposes of electing Series A Directors. Series A Directors may be removed, with or without cause, at any time only by vote or written consent of the holders of a majority of the voting power of the issued and outstanding shares of Series A Preferred Stock. A vacancy in any directorship held by a Series A Director shall be filled only by vote or written consent of the holders of a majority of the voting power of the issued and outstanding shares of Series A Preferred Stock.

(d) Except as required by law, or as otherwise set forth in this Restated Certificate of Incorporation, the holders of Series B

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Preferred Stock shall not be entitled to vote at any annual or special meeting of shareholders of the Corporation.

3.4 Reacquired Shares. Any shares of Preferred Stock converted, purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. None of such shares of Preferred Stock shall be reissued by the Corporation.

3.5 Liquidation, Dissolution or Winding Up. (a) Upon the voluntary or involuntary dissolution, liquidation or winding up (each, a "Liquidation") of the Corporation, the holders of the shares of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive and to be paid out of the assets of the Corporation available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Stock, the applicable Series Liquidation Value (as defined below) with respect to each such outstanding share of Preferred Stock. If, upon any Liquidation of the Corporation, the assets of the Corporation available for distribution shall be insufficient to pay in full the Series Liquidation Value with respect to each outstanding share of Preferred Stock, then such assets shall be distributed among the holders of Series A Preferred Stock and Series B Preferred Stock ratably in accordance with the respective amounts that would be payable on such shares of Preferred Stock if such assets were sufficient to permit payment in full of all amounts payable thereon.

(b) After the payment to the holders of shares of the Preferred Stock of the full amount of the liquidating distribution to which they are entitled under this Section 3.5, the holders of the Preferred Stock as such shall have no right or claim to any of the remaining assets of the Corporation.

(c) Neither the consolidation, merger or other business combination of the Corporation with or into any other Person (as defined in Section 3.11 below) or Persons nor the sale of all or substantially all the assets of the Corporation shall be deemed to be a Liquidation for purposes of this Section 3.5 of this Article Fifth.

(d) "Series Liquidation Value" shall mean, (i) in the case of a share of Series A Preferred Stock, the greater of (A) the Series A Redemption Value (as defined in Section 3.7) and (B) the amount which would have been paid in such liquidation, dissolution or winding up based upon the number of shares of Common Stock into

which a share of Series A Preferred Stock could be converted pursuant to the provisions of Section 3.6 of this Article Fifth and (ii) in the case of a share of Series B Preferred Stock, \$100.00, together with all dividends accrued thereon to the date fixed for distribution and not theretofore paid or declared and set apart for payment in full.

3.6 Conversion. (a) Each share of Series A Preferred Stock shall automatically be converted into a number of shares of Common Stock, at the then effective Conversion Ratio (as defined below), upon the consummation of a Qualified IPO (as defined in Section 3.11 below). In addition, at the option of the holder of any Series A Preferred Stock, such holder shall have the right, at any time and from time to time prior to the consummation of a Qualified IPO, by written notice to the Corporation, to convert any share of Series A Preferred Stock owned by such holder into a number of shares of Common Stock, at the then effective Conversion Ratio.

(b) The Corporation shall at all times reserve and keep available for issuance upon the conversion of the Series A Preferred Stock, free from any preemptive rights, such number of its authorized but unissued shares of Common Stock as will from time to time be necessary to permit the conversion of all outstanding shares of Series A Preferred Stock into shares of Common Stock, and shall take all action required to increase the authorized number of shares of Common Stock if necessary to permit the conversion of all outstanding shares of Series A Preferred Stock.

(c) The Conversion Ratio shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time or from time to time after the date hereof (A) pay any dividend, or make any distribution, on the outstanding shares of Common Stock in shares of Common Stock, (B) subdivide the outstanding shares of Common Stock, (C) combine the outstanding shares of Common Stock into a smaller number of shares or (D) issue by reclassification of the shares of Common Stock any shares of capital stock of the Corporation, then, and in each such case, the Conversion Ratio in effect immediately prior to such event or the record date therefor, whichever is earlier, shall be adjusted so that the holder of any shares of Series A Preferred Stock thereafter convertible into Common Stock pursuant to this Section 3.6 of this Article Fifth shall be entitled to receive the number and type of

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which such holder would have owned or have been entitled to receive after the happening of any of the events described above, had such shares of Series A Preferred Stock been converted into Common Stock immediately prior to the happening of such event or the record date therefor, whichever is earlier. An adjustment made pursuant to this clause (i) shall become effective (x) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of shares of Common Stock entitled to receive such dividend or distribution, or (y) in the case of such subdivision, reclassification or combination, at the close of business on the day upon which such corporate action becomes effective.

(ii) Except with respect to Excluded Securities (as defined below), in case the Corporation shall issue any shares of Common Stock (or Common Stock Equivalents) after the date the first share of Series A Preferred Stock is issued (the "Issue Date") at a price per share (or having a conversion or exercise price per share) of less than the then Share Price (as defined below), and in each such case, the Conversion Ratio shall be adjusted by multiplying (A) the Conversion Ratio in effect on the day immediately prior to the date of issuance of such shares (or Common Stock Equivalents) by (B) a fraction, the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding on such date prior to such issuance and (2) the number of additional shares of Common Stock issued (or issuable upon conversion, exchange or exercise of such Common Stock Equivalents), and the denominator of which shall be the sum of (x) the number of shares of Common Stock outstanding on such date prior to such issuance and (y) the number of shares of Common Stock purchasable at a price per share equal to the then Share Price with the aggregate consideration receivable by the Corporation for the total number of shares of Common Stock so issued (or issuable upon conversion, exchange or exercise of such Common Stock Equivalents). An adjustment made pursuant to this clause (ii) shall be made on the next Business Day following the date on which any such issuance is made and shall be effective retroactively to the close of business on the date of such issuance. For purposes of this clause (ii), the aggregate consideration receivable by the Corporation in connection with the issuance of shares of Common Stock or of Common Stock Equivalents shall be deemed to be equal to the sum of the aggregate offering price (before deduction of underwriting discounts or commissions and expenses payable to third parties, if any) of all such Common Stock and/or Common Stock Equivalents plus the minimum aggregate

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amount, if any, payable upon conversion, exchange or exercise of any such Common Stock Equivalents. The issuance or resale of any shares of Common Stock (whether treasury shares or newly issued shares) pursuant to a dividend or distribution on, or subdivision, combination or reclassification of, the outstanding shares of Common Stock requiring an adjustment in the Conversion Ratio pursuant to clause (i) of this paragraph (c) of this Section 3.6 of this Article Fifth, shall not be deemed to constitute an issuance of Common Stock or Common Stock Equivalents by the Corporation to which this clause (ii) applies. Upon the expiration or termination of any unconverted, unexchanged or unexercised Common Stock Equivalents for which an adjustment has been made pursuant to this clause (ii), the adjustments shall forthwith be reversed to effect such Conversion Ratio as would have been in effect at the time of such expiration or termination had such Common Stock Equivalents, to the extent outstanding immediately prior to such expiration or termination, never been issued. Excluded Securities shall mean (i) shares of Common Stock issuable or issued to employees pursuant to an employee benefit plan approved by the Board and by the Series A Director(s), and the primary purpose of which is not to raise additional equity capital for the Corporation; (ii) any shares of Common Stock or Series A Preferred Stock issuable to GS Capital Partners, L. P. and certain of its affiliates (the "GS Parties") pursuant to Section 1.4 of the Purchase Agreement and any shares of Common Stock issuable upon the conversion of any such shares of Series A Preferred Stock; (iii) shares of Common Stock or Common Stock Equivalents issued and outstanding upon the Issue Date or Common Stock issued upon the conversion or exercise of any such Common Stock Equivalent; (iv) shares of Common Stock issued or issuable as direct consideration for the acquisition by the Corporation of another business entity or in connection with a merger or consolidation as a result of which the holders of the Corporation's outstanding securities immediately prior to the consummation of such transaction hold voting securities in excess of fifty percent (50%) of the voting power of the surviving or resulting entity, which transaction has been approved by the Board and by the Series A Director(s); (v) shares of Common Stock issued in any initial public offering of the Corporation's securities; or (vi) shares of Common Stock or Common Stock Equivalents issued to a certain finance corporation pursuant to the terms of the Program Agreement, dated as of July 19, 1995, between the Corporation and such finance corporation.

(iii) For purposes of this paragraph (c) of this Section 3.6 of this Article Fifth, the number of shares of Common

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Stock at any time outstanding shall mean the aggregate of all shares of Common Stock then outstanding (other than any shares of Common Stock then owned or held by or for the account of the Corporation) treating for purposes of this calculation all Common Stock Equivalents then outstanding as having been converted, exchanged or exercised.

(iv) If the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution and shall thereafter, and before such dividend or distribution is paid or delivered to stockholders entitled thereto, legally abandon its plan to pay or deliver such dividend or distribution, then no adjustment in the Conversion Ratio then in effect shall be made by reason of the taking of such record, and any such adjustment previously made as a result of the taking of such record shall be reversed.

(d) The issuance of certificates for shares of Common Stock upon conversion of the Series A Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided 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 Series A Preferred Stock which is being converted.

(e) The Corporation will at no time close its transfer books against the transfer of any Series A Preferred Stock, or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series A Preferred Stock, in any manner which interferes with the timely conversion of such Series A Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

(f) As used in this paragraph 3, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, par value \$.01 per share, as constituted on the date of filing of this Restated Certificate of Incorporation, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall neither be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends nor be entitled to a preference in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, provided that the

shares of Common Stock receivable upon conversion of shares of Series A Preferred Stock shall include only shares designated as Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets to be issued in exchange for such Common Stock pursuant thereto.

(g) If the Corporation shall be a party to any transaction including without limitation, a merger, consolidation, sale of all or substantially all of the Corporation's assets or a reorganization, reclassification or recapitalization of the capital stock of the Corporation but excluding any transaction for which provision for adjustment is otherwise made in this Section 3.6 (each of the foregoing being referred to as a "Transaction"), in each case, as a result of which shares of Common Stock are converted into the right to receive stock, securities or other property (including cash or any combination thereof), each share of Series A Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Series A Preferred Stock would have been entitled upon such Transaction; and, in any such case, appropriate adjustment (as determined by the Board) shall be made in the application of the provisions set forth in this Section 3.6 with respect to the rights and interest thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 3.6 shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series A Preferred Stock. The Corporation shall not effect any Transaction (other than a consolidation or merger in which the Corporation is the continuing corporation) unless prior to or simultaneously with the consummation thereof the Corporation, or the successor corporation or purchaser, as the case may be, shall provide in its charter document that each share of Series A Preferred Stock shall be converted into such shares of stock, securities or property as, in accordance with the foregoing provisions, each such holder is entitled to receive. The provisions of this paragraph (g) shall similarly apply to successive Transactions.

(h) The Corporation will not, by amendment of its Restated Certificate of Incorporation or through any reorganization, recapitalization, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or

performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3.6 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

(i) No holder of Series B Preferred Stock shall have the right to convert such shares into any other class of stock of the Corporation.

(j) Notices. In case, at any time while any shares of Series A Preferred Stock are outstanding,

(i) the Corporation shall declare a dividend (or any other distribution) on its Common Stock; or

(ii) the Corporation shall authorize the issuance to the holders of its Common Stock, of Common Stock Equivalents, or rights or warrants to subscribe for or purchase shares of its Common Stock or of any other subscription rights or warrants; or

(iii) the Company shall authorize any reorganization, reclassification or recapitalization of its Common Stock; or

(iv) the Company shall authorize the consolidation or merger of the Corporation into or with any other person, the sale or transfer of a substantial portion of its capital stock, business or assets to another person, or any other similar business combination or transaction; or

(v) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the Corporation; then the Corporation shall promptly deliver to the transfer agent of the Series A Preferred Stock and to each of the holders of shares of Series A Preferred Stock at their last addresses as they shall appear on the stock register, at least 15 days before the date hereinafter specified (or the earlier of the dates hereinafter specified, in the event that more than one date is specified), a notice describing such event and stating (A) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or (B) the date on which any such reclassification, reorganization, recapitalization,

consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property (including cash), if any, deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

3.7 Redemption. (a) The Corporation shall redeem, out of funds legally available therefor, each outstanding share of Series A Preferred Stock on the first Business Day after September 14, 2010, by paying therefor an amount per share (the "Series A Redemption Value") equal to the sum of (i) the quotient of (A) \$20,000,000 divided by (B) the result of (I) the total number of shares of Series A Preferred Stock issued by the Corporation regardless of whether then outstanding minus (II) the Returned Shares (as defined below) and (ii) all declared but unpaid dividends per share of Series A Preferred Stock.

(b) The Corporation shall redeem, out of funds legally available therefor, each outstanding share of Series B Preferred Stock upon the earlier of (i) the completion of a Qualified IPO and (ii) the first Business Day after September 14, 2010, by paying therefor an amount per share equal to the Series Liquidation Value per share of Series B Preferred Stock.

(c) Notice of any redemption of shares of Preferred Stock pursuant to paragraph (a) or (b) of this Section 3.7 shall be mailed at least 10 but not more than 30 days prior to the date fixed for redemption to each holder of shares of Preferred Stock to be redeemed, at such holder's address as it appears on the transfer books of the Corporation.

(d) On the date of any redemption being made pursuant to this Section 3.7, the Corporation shall wire transfer to each holder the redemption price for the shares of Preferred Stock so redeemed.

3.8 Reports as to Adjustment. Upon any adjustment of the Conversion Ratio then in effect pursuant to the provisions of Section 3.6 of this Article Fifth, then, and in each such case, the Corporation shall promptly deliver to the Transfer Agent of the Series A Preferred Stock and the Common Stock and to each of the holders of the Series A Preferred Stock and the Common Stock, a certificate signed by the Chairman of the Board, a Vice Chairman,

the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation setting forth in reasonable detail the event requiring the adjustment, the method by which such adjustment was calculated and the Conversion Ratio then in effect following such adjustment. Where appropriate, such notice to holders of the Series A Preferred Stock may be given in advance.

3.9 Certain Covenants. Any registered holder of Preferred Stock may proceed to protect and enforce its rights and the rights of any other holders of Preferred Stock with any and all remedies available at law or in equity.

3.10 Protective Provisions. (a) So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 66 $\frac{2}{3}$ % of the then outstanding shares of Series A Preferred Stock:

(i) alter or change the rights, preference or privileges of the shares of Series A Preferred Stock or otherwise amend this Restated Certificate of Incorporation, in either case, whether by merger, consolidation or otherwise, so as to affect adversely the shares of Series A Preferred Stock; or

(ii) increase the authorized number of shares of Series A Preferred Stock; or

(iii) create or designate, or authorize the issuance of, any new class or series of stock (A) ranking senior or having a preference over, or being on a parity with, the Series A Preferred Stock with respect to dividends or upon liquidation, (B) having rights similar to any rights of the Series A Preferred Stock under Section 3.3 hereof or (C) convertible into any class or series of stock described in clause (A) of this paragraph (iii).

(b) So long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 66 $\frac{2}{3}$ % of the then outstanding shares of Series B Preferred Stock:

(i) alter or change the rights, preference or privileges of the shares of Series B Preferred Stock or otherwise

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amend this Restated Certificate of Incorporation so as to affect adversely the shares of Series B Preferred Stock; or

(ii) increase the authorized number of shares of Series B Preferred Stock; or

(iii) create or designate, or authorize the issuance of, any new class or series of stock (A) ranking senior or having a preference over, or being on a parity with, Series B Preferred Stock with respect to dividends or upon liquidation or (B) convertible into any class or series of stock described in clause (A) of this paragraph (iii).

3.11 Major Transactions. So long as the original holders of Series A Preferred Stock, in the aggregate, own (i) 5% or more of the outstanding Common Stock of the Corporation (treating for purposes of these calculations all Series A Preferred Stock (but no other Common Stock Equivalents) as having been converted, exchanged or exercised), and (ii) a majority of the outstanding Series A Preferred Stock, the Corporation shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, take any of the actions set forth in Section 5.6(b) of the Purchase Agreement without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series A Preferred Stock.

3.12 Definitions. In addition to any other terms defined herein, for purposes of this Article Fifth, the following terms shall have the meanings indicated:

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"Common Stock Equivalent" shall mean securities convertible into, or exchangeable or exercisable for, shares of Common Stock.

"Conversion Ratio," determined as of any date, shall equal the number of shares of Common Stock into which one share of Series A Preferred Stock is convertible pursuant to Section 3.6 of this Article Fifth. The Conversion Ratio shall initially equal one and shall be subject to adjustment as provided in paragraph (c) of Section 3.6 of this Article Fifth.

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"Corporation Valuation" shall mean with respect to any public offering of Common Stock, the amount obtained by multiplying the total number of shares of Common Stock outstanding immediately prior to such public offering (treating for purposes of this calculation all shares of Series A Preferred Stock (but no other Common Stock Equivalents) as having been converted, exchanged or exercised) multiplied by the per share offering price for such public offering.

The term "distribution" shall include the transfer of cash or property to the holders of a class of capital stock of the Corporation, without consideration, whether by way of dividend or otherwise (except a dividend in shares of such class of stock), or the purchase or redemption of shares of the Corporation, for cash or property, including such transfer, purchase or redemption by a subsidiary of the Corporation. The time of any distribution by way of dividends shall be the date of declaration thereof, and the time of any distribution by purchase or redemption of shares shall be the date on which cash or property is transferred by the Corporation, whether or not pursuant to a contract of an earlier date; provided, however, that, where a debt security is issued in exchange for shares, the time of the distribution is the date when the Corporation acquires the shares for such exchange.

"Junior Stock" shall mean any capital stock of the Corporation ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Preferred Stock.

"Person" shall mean any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivisions thereof.

"Purchase Agreement" shall mean the Preferred Stock Purchase Agreement among the Corporation and its subsidiaries, GS Capital Partners, L.P. and certain of its affiliates and Richard T. Santulli, pursuant to which the Series A Preferred Stock is issued. A copy of the Purchase Agreement is on file in the office of the Corporation.

"Qualified IPO" shall mean a bona fide, firm commitment, underwritten public offering of Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$15,000,000 of gross proceeds to the Corporation and any selling shareholders before deducting

underwriting discounts and commissions and offering expenses, and reflecting a Corporation Valuation of \$75,000,000 or more.

"Returned Shares" shall mean the aggregate number of shares of Series A Preferred Stock issued by the Corporation with respect to all Program Agreement Options (as defined in the Purchase Agreement) that expired or terminated without being exercised.

"Share Price" shall mean, at any time of calculation, the amount (expressed in dollars) equal to the quotient of (i) \$20,000,000 divided by the sum of (A) 351.37, (B) the additional shares of Series A Preferred Stock, if any, issued to the GS Parties pursuant to Section 1.4 as a result of the breach of the representation and warranty contained in the last sentence of Section 2.3 of the Purchase Agreement, and (C) 50% of the result of (x) the aggregate number of shares of Series A Preferred Stock, if any, issued to the GS Parties pursuant to Section 1.4 of the Purchase Agreement as a result of the issuance of all Program Agreement Options minus (y) the Returned Shares. The Share Price shall be adjusted to reflect any of the events described in clauses (A)-(D) of Section 3.6(c)(i) of this Article Fifth.

"Subsidiary" shall mean with respect to any Person, any corporation, partnership or other entity of which shares of stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership or other entity at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

SIXTH: No shareholder of this Corporation shall by reason of his holding shares of any class have any preemptive or preferential right to purchase or subscribe to any shares of any class of this Corporation, now or hereafter to be authorized, or any shares or other securities convertible into or carrying options or warrants to purchase shares of any class, now or hereafter to be authorized, whether or not the issuance of any such shares or other securities would adversely affect the dividend or voting rights of such holders, other than such rights, if any, as the Board of Directors of the Corporation, in its discretion from time to time may grant, and at such price as the Board of Directors in its discretion may fix, and the Board of Directors may issue shares of any class of this Corporation or

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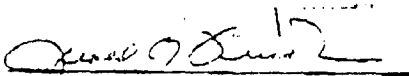
other securities convertible into or carrying options or warrants to purchase shares of any class, without offering any such shares of any class, either in whole or in part, to the existing shareholders of any class.

SEVENTH: The liability of the Corporation's directors to the Corporation or its shareholders for damages for breach of duty as a director shall be eliminated to the fullest extent permitted by the Business Corporation Law of the State of New York, as it exists on the date hereof or as it may hereafter be amended. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. Any person or persons who, pursuant to any provision of this Certificate of Incorporation, exercises or performs any of the powers or duties conferred or imposed upon a director of the Corporation shall be treated as a director for purposes of this Article Seventh and shall be entitled to the limitation of liability set forth in this Article Seventh.


5. The foregoing Restated Certificate of Incorporation and the amendments reflected herein were authorized by the unanimous written consent of the Board of Directors of the Corporation dated as of September 12, 1995, as permitted by Section 708(b) of the Business Corporation Law of the State of New York, and by the unanimous written consent of the shareholders of the Corporation dated as of September 12, 1995, as permitted by Section 615(a) of the Business Corporation Law of the State of New York.

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IN WITNESS WHEREOF, the undersigned have subscribed this Certificate this 12th day of September, 1995, and affirm the statements contained herein are true under penalties of perjury.



Jerold B. Friedman
Executive Vice President and Secretary



David Orlinsky
Vice Chairman and Assistant Secretary

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RESTATED CERTIFICATE OF INCORPORATION
OF
EXECUTIVE JET INTERNATIONAL, INC
UNDER SECTION 807 OF THE
BUSINESS CORPORATION LAW

*SAC
9/10/95*

THOMPSON HINE & FLORY
2000 COURTHOUSE PLAZA, N.E.
DAYTON, OH 45401

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DEPARTMENT OF STATE
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