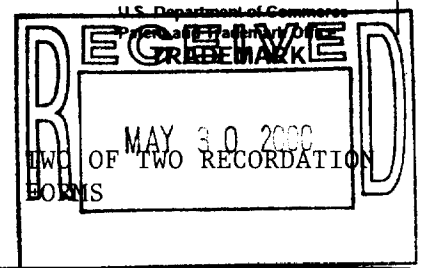


07-03-2000



101394091



5.30.00

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID # _____
- Correction of PTO Error
Reel # _____ Frame # _____
- Corrective Document
Reel # _____ Frame # _____

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
- Merger
Effective Date
Month Day Year

- Change of Name
- Other _____

Conveying Party

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

- Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

FOR OFFICE USE ONLY

07/03/2000 DNGUYEN 00000154 231325 75639136

01 FC:481 40.00 CH
02 FC:482 200.00 CH

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Jerome S. Ebenstein

May 30, 2000

Name of Person Signing

Signature

Date Signed

State of Delaware
Office of the Secretary of State

PAGE 1

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 CERTIFICATE OF MERGER, WHICH MERGES:

"CBS CORPORATION", A PENNSYLVANIA CORPORATION,
WITH AND INTO "VIACOM INC." UNDER THE NAME OF "VIACOM INC.",
A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FOURTH DAY OF MAY, A.D. 2000, AT 8 O'CLOCK A.M.



2106821 8100M

001233774

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

Edward J. Freel, Secretary of State

AUTHENTICATION: 0426415

DATE: 05-09-00

TRADEMARK
REEL: 002094 FRAME: 0781

CERTIFICATE OF MERGER

MERGING

CBS CORPORATION

INTO

VIACOM INC.

(Pursuant to Section 252 of the
Delaware General Corporation Law)

The undersigned Delaware corporation does hereby certify that:

FIRST: The name and state of incorporation of each of the constituent corporations in the merger (the "Merger") are as follows:

<u>Name</u>	<u>State of Incorporation</u>
CBS Corporation	Pennsylvania
Viacom Inc.	Delaware

SECOND: An Amended and Restated Agreement and Plan of Merger between Viacom Inc., CBS Corporation and Viacom/CBS LLC dated as of September 6, 1999, as amended and restated as of October 8, 1999, and as of November 23, 1999 (the "Merger Agreement") has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 252 of the Delaware General Corporation Law.

THIRD: Viacom Inc. shall be the surviving corporation.

FOURTH: The Restated Certificate of Incorporation of the surviving corporation, Viacom Inc., with such amendments as are effected by the Merger, is attached to this Certificate of Merger as Exhibit A, and, as so amended, shall constitute the Restated Certificate of Incorporation, as amended, of the surviving corporation.

FIFTH: The executed Agreement and Plan of Merger is on file at an office of the surviving corporation. The address of the principal place of business of the surviving corporation is 1515 Broadway, New York, NY 10036.

SIXTH: A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation.

SEVENTH: That the authorized capital stock of CBS Corporation consists of 1,100,000,000 shares of common stock, par value \$1.00 per share, and 25,000,000 shares of preferred stock, par value \$1.00 per share.

IN WITNESS WHEREOF, Viacom Inc. has caused this Certificate of Merger to be executed by its duly authorized officer this 4th of May, 2000.

VIACOM INC.


By: 
Name: Michael D. Fricklas
Title: Senior Vice President,
General Counsel and
Secretary

EXHIBIT A

**RESTATED CERTIFICATE OF INCORPORATION
OF
VIACOM INC.**

(Originally incorporated on November 10, 1986 under the name Arsenal Holdings, Inc.)

ARTICLE I

NAME

The name of this Corporation is Viacom Inc.

ARTICLE II

REGISTERED OFFICE AND AGENT FOR SERVICE

The registered office of the Corporation in the State of Delaware is located at 1013 Centre Road, City of Wilmington, County of New Castle. The name and address of the Corporation's registered agent for service of process in Delaware is:

Corporation Service Company
1013 Centre Road
Wilmington, Delaware 19805-1297

ARTICLE III

CORPORATE 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

(1) Shares, Classes and Series Authorized.

(a) The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 3,525,000,000 shares. The classes and the aggregate number of shares of stock of each class which the Corporation shall have authority to issue are as follows:

(i) 500,000,000 shares of Class A Common Stock, \$0.01 par value ("Class A Common Stock").

(ii) 3,000,000,000 shares of Class B Common Stock, \$0.01 par value ("Class B Common Stock").

(iii) 25,000,000 shares of Preferred Stock, \$0.01 par value ("Preferred Stock").

(b) The number of authorized shares of Class B Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote.

(2) *Powers and Rights of the Class A Common Stock and the Class B Common Stock.*

Except as otherwise expressly provided in this Restated Certificate of Incorporation, all issued and outstanding shares of Class A Common Stock and Class B Common Stock shall be identical and shall entitle the holders thereof to the same rights and privileges.

A. *Voting Rights and Powers.* Except as otherwise provided in this Restated Certificate of Incorporation or required by law, with respect to all matters upon which stockholders are entitled to vote, the holders of the outstanding shares of Class A Common Stock shall vote together with the holders of any other outstanding shares of capital stock of the Corporation entitled to vote, without regard to class, and every holder of outstanding shares of Class A Common Stock shall be entitled to cast thereon one vote in person or by proxy for each share of Class A Common Stock standing in his name. The holders of shares of Class A Common Stock shall have the relevant class voting rights set forth in Article IX. Except as otherwise required by law, the holders of outstanding shares of Class B Common Stock shall not be entitled to any votes upon any questions presented to stockholders of the Corporation, including but not limited to, whether to increase or decrease (but not below the number of shares then outstanding) the number of authorized shares of Class B Common Stock.

B. *Dividends.* Subject to the rights and preferences of the Preferred Stock set forth in this Article IV and in any resolution or resolutions providing for the issuance of such stock as set forth in Section (3) of this Article IV, the holders of Class A Common Stock and Class B Common Stock shall be entitled to receive ratably such dividends as may from time to time be declared by the Board of Directors out of funds legally available therefor.

C. *Distribution of Assets Upon Liquidation.* In the event the Corporation shall be liquidated, dissolved or wound up, whether voluntarily or involuntarily, after there shall have been paid or set aside for the holders of all shares of the Preferred Stock then outstanding the full preferential amounts to which they are entitled under Section 5

of this Article IV or the resolutions, as the case may be, authorizing the issuance of such Preferred Stock, the net assets of the Corporation remaining thereafter shall be divided ratably among the holders of Class A Common Stock and Class B Common Stock.

D. *Split, Subdivision or Combination.* If the Corporation shall in any manner split, subdivide or combine the outstanding shares of Class A Common Stock or Class B Common Stock, the outstanding shares of the other class of Common Stock shall be proportionally split, subdivided or combined in the same manner and on the same basis as the outstanding shares of the other class of Common Stock have been split, subdivided or combined.

E. *Conversion.* So long as there are 10,000 shares of Class A Common Stock outstanding, each record holder of shares of Class A Common Stock or Class B Common Stock may convert any or all of such shares into an equal number of shares of Class B Common Stock by surrendering the certificates for such shares, accompanied by payment of documentary, stamp or similar issue or transfer taxes, if any, along with a written notice by such record holder to the Corporation stating that such record holder desires to convert such shares into the same number of shares of Class B Common Stock and requesting that the Corporation issue all of such Class B Common Stock to the persons named therein, setting forth the number of shares of Class B Common Stock to be issued to each such person and the denominations in which the certificates therefor are to be issued.

(3) *Powers and Rights of the Preferred Stock.*

Subject to Article XIII of this Restated Certificate of Incorporation, the Preferred Stock may be issued from time to time in one or more series, with such distinctive serial designations as may be stated or expressed in the resolution or resolutions providing for the issue of such stock adopted from time to time by the Board of Directors; and in such resolution or resolutions providing for the issuance of shares of each particular series, the Board of Directors is also expressly authorized to fix: the right to vote, if any; the consideration for which the shares of such series are to be issued; the number of shares constituting such series, which number may be increased (except as otherwise fixed by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors; the rate of dividends upon which and the times at which dividends on shares of such series shall be payable and the preference, if any, which such dividends shall have relative to dividends on shares of any other class or classes or any other series of stock of the Corporation; whether such dividends shall be cumulative or noncumulative, and, if cumulative, the date or dates from which dividends on shares of such series shall be cumulative; the rights, if any, which the holders of shares of such series shall have in the event of any voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding up of the affairs of the Corporation; the rights, if any, which the holders of shares of such series shall have to convert such shares into or exchange such shares for shares of any other class or classes or any other series of stock of the Corporation or for any debt securities of the Corporation and the terms and conditions,

including, without limitation, price and rate of exchange, of such conversion or exchange; whether shares of such series shall be subject to redemption, and the redemption price or prices and other terms of redemption, if any, for shares of such series including, without limitation, a redemption price or prices payable in shares of Class A Common Stock or Class B Common Stock; the terms and amounts of any sinking fund for the purchase or redemption of shares of such series; and any and all other powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof pertaining to shares of such series permitted by law.

(4) *Issuance of Class A Common Stock, Class B Common Stock and Preferred Stock.*

Subject to Article XIII of this Restated Certificate of Incorporation, the Board of Directors of the Corporation may from time to time authorize by resolution the issuance of any or all shares of Class A Common Stock, Class B Common Stock and Preferred Stock herein authorized in accordance with the terms and conditions set forth in this Restated Certificate of Incorporation for such purposes, in such amounts, to such persons, corporations, or entities, for such consideration, and in the case of the Preferred Stock, in one or more series, all as the Board of Directors in its discretion may determine and without any vote or other action by any of the stockholders of the Corporation, except as otherwise required by law.

(5) *Series C Preferred Stock*

(a) DESIGNATION AND AMOUNT. The shares of this series shall be designated as "Series C Preferred Stock" (the "Series C Preferred Stock"). The par value of each share of Series C Preferred Stock shall be \$.01. The number of shares constituting the Series C Preferred Stock shall initially be the Preferred Exchange Ratio (as defined in the Amended and Restated Agreement and Plan of Merger dated as of September 6, 1999, as amended and restated as of October 8, 1999, as it may be further amended from time to time, among the Corporation and CBS (as defined in Article XIII of this Restated Certificate of Incorporation)(the "Merger Agreement")) multiplied by the number of shares of CBS Series B Participating Preferred Stock, par value \$1.00 per share, issued and outstanding immediately prior to the Effective Time (as defined in the Merger Agreement). The Corporation is authorized to issue fractional shares of Series C Preferred Stock to 1/1000th of a share in accordance with the terms herein. All references herein to shares of Series C Preferred Stock shall be deemed to include, if applicable, references to such fractional shares.

(b) DIVIDENDS AND DISTRIBUTIONS.

(1) Subject to the provisions for adjustment hereinafter set forth, the holders of outstanding shares of Series C Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, a cash dividend in an amount per share (rounded to the nearest cent) equal to 1000 times the aggregate per share amount of each cash dividend declared or paid on the Class B Common Stock. In addition, in the event the Corporation shall, at any time after the

issuance of any share or fraction of a share of Series C Preferred Stock, pay any dividend or make any distribution on the shares of Class B Common Stock of the Corporation, whether by way of a dividend or a reclassification of stock, a recapitalization, reorganization or partial liquidation of the Corporation or otherwise, which is payable in cash or any debt security, debt instrument, real or personal property or any other property (other than (x) cash dividends subject to the immediately preceding sentence, (y) a distribution of shares of Class B Common Stock or other capital stock of the Corporation subject to paragraph (h)(1) below or (z) a distribution of rights or warrants to acquire any such shares subject to paragraph (h)(3) or (h)(5) below, including as such a right any debt security convertible into or exchangeable for any such shares, at a price less than the Fair Market Value (as hereinafter defined) of such shares on the date of issuance of such rights or warrants), then, and in each such event, the Corporation shall simultaneously pay on each then outstanding share of Series C Preferred Stock a distribution, in like kind, of 1000 times such distribution paid on a share of Class B Common Stock (subject to the provisions for adjustment hereinafter set forth). The dividends and distributions on the Series C Preferred Stock to which holders thereof are entitled pursuant to the first and second sentences of this paragraph (b)(1) are hereinafter referred to as "Dividends" and the multiple of such cash and non-cash dividends and distributions on the Class B Common Stock applicable to the determination of the Dividends, which shall be 1000 initially but shall be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Dividend Multiple." In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series C Preferred Stock, declare or pay any dividend or make any distribution on Class B Common Stock payable in shares of Class B Common Stock, or effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Class B Common Stock into a greater or lesser number of shares of Class B Common Stock, then in each such case the Dividend Multiple thereafter applicable to the determination of the amount of Dividends which holders of shares of Series C Preferred Stock shall be entitled to receive shall be the Dividend Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Class B Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class B Common Stock that were outstanding immediately prior to such event.

(2) The Corporation shall declare each Dividend at the same time it declares any cash or non-cash dividend or distribution on the Class B Common Stock in respect of which a Dividend is required to be paid. No cash or non-cash dividend or distribution on the Class B Common Stock in respect of which a Dividend is required to be paid shall be paid or set aside for payment on the Class B Common Stock unless a Dividend in respect of such dividend or distribution on the Class B Common Stock shall be simultaneously paid, or set aside for payment, on the Series C Preferred Stock.

(3) All Dividends paid with respect to shares of the Series C Preferred Stock shall be paid pro rata on a share-by-share basis to the holders entitled thereto.

(4) The holders of shares of Series C Preferred Stock shall not be entitled to receive any dividends or distributions except as provided herein.

(c) **VOTING RIGHTS.** The holders of record of outstanding shares of Series C Preferred Stock shall have the following voting rights:

(1) Subject to the provisions for adjustment hereinafter set forth, each share of Series C Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the holders of the Common Stock. The number of votes which a holder of a share of Series C Preferred Stock is entitled to cast, as the same may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Vote Multiple." In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series C Preferred Stock, declare or pay any dividend on Class A Common Stock, payable in shares of Class A Common Stock, or effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Class A Common Stock into a greater or lesser number of shares of Class A Common Stock, then in each such case the Vote Multiple thereafter applicable to the determination of the number of votes per share to which holders of shares of Series C Preferred Stock shall be entitled after such event shall be the Vote Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Class A Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class A Common Stock that were outstanding immediately prior to such event.

(2) Except as otherwise provided in this Restated Certificate of Incorporation or required by law, the holders of shares of Series C Preferred Stock and the holders of shares of Class A Common Stock shall vote together as one class on all matters submitted to a vote of shareholders of the Corporation.

(3) Except as otherwise provided in this Restated Certificate of Incorporation or required by law, holders of Series C Preferred Stock shall have no other special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Class A Common Stock as set forth herein) for the taking of any corporate action.

(d) **CONVERSION.** The shares of Series C Preferred Stock shall be convertible as follows:

(1) Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series C Preferred Stock. Subject to the provisions for adjustment hereinafter set forth, each share of Series C Preferred Stock shall be convertible into 1000 shares of Class B Common Stock. The number of shares of Class B Common Stock into which each share of Series C Preferred Stock may be converted is hereinafter referred to as the "Conversion Rate." In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series C Preferred Stock, declare or pay any dividend or make any distribution on Class B Common Stock payable in shares of Class B Common Stock, or effect a subdivision or

split or a combination, consolidation or reverse split of the outstanding shares of Class B Common Stock into a greater or lesser number of shares of Class B Common Stock, then in each such case the Conversion Rate thereafter applicable shall be the Conversion Rate applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Class B Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class B Common Stock that were outstanding immediately prior to such event.

(2) No fractional shares of Class B Common Stock shall be issued upon conversion of the Series C Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then Fair Market Value per share of the Class B Common Stock. For such purpose, all shares of Series C Preferred Stock being converted by a holder shall be aggregated, and any resulting fractional share of Class B Common Stock shall be paid in cash. Before any holder of shares of Series C Preferred Stock shall be entitled to convert the same into full shares of Class B Common Stock, and to receive certificates therefor, the holder shall surrender the certificate or certificates representing the shares of Series C Preferred Stock, duly endorsed, at the office of the Corporation or of any transfer agent for the Series C Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same.

The Corporation shall, as soon as practicable after such delivery, issue and deliver at such office to such holder of Series C Preferred Stock a certificate or certificates for the number of shares of Class B Common Stock to which such holder shall be entitled and a check payable to such holder in the amount of any cash amount payable as the result of a conversion into fractional shares of Class B Common Stock, plus any declared and unpaid dividends on the converted Series C Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of receipt of such surrender of the shares of Series C Preferred Stock to be converted, and the person or persons entitled to receive the shares of Class B Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class B Common Stock on such date.

(3) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class B Common Stock, solely for the purpose of effecting the conversion of the shares of Series C Preferred Stock, such number of shares of Class B Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock.

(4) Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series C Preferred Stock or to the Corporation shall be given via facsimile transmission or via certified or registered U.S. mail or via private overnight delivery service, if to the holder, at (615) 316-6570 or such holder's address appearing on the books of the Corporation, and if to the Corporation, at 1515 Broadway, New York, NY 10036, attention General Counsel, facsimile no.: 212-258-6134, or such other facsimile number or address as the holder or the Corporation shall notify the other of in

accordance with the notice provisions set forth in this paragraph (d)(5). Notice shall be deemed to have been given on the date of facsimile transmission (if the notice is faxed) or five days after mailing (if the notice is mailed) or the day after the notice is given to the delivery service (if sent by overnight courier).

(e) CERTAIN RESTRICTIONS.

(1) Whenever Dividends are in arrears or the Corporation shall be in default on payment thereof, thereafter and until all accrued and unpaid Dividends, whether or not declared, on shares of Series C Preferred Stock outstanding shall have been paid or set irrevocably aside for payment in full, and in addition to any and all other rights which any holder of shares of Series C Preferred Stock may have in such circumstances, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration, any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series C Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity as to dividends with the Series C Preferred Stock, unless dividends are paid ratably on the Series C Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled if the full dividends accrued thereon were to be paid;

(iii) except as permitted by subparagraph (iv) of this paragraph (c)(1), redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (both as to dividends and upon liquidation, dissolution or winding up) to the Series C Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series C Preferred Stock, or any shares of stock ranking on a parity with the Series C Preferred Stock (either as to dividends or upon liquidation, dissolution or winding up) except as permitted by subparagraph (iii) of this paragraph (e)(1) or in accordance with a purchase offer made to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(2) The Corporation shall not permit any Subsidiary (as hereinafter defined) of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under subparagraph (1) of this paragraph (e), purchase or otherwise acquire such shares at such time and in such manner. A "Subsidiary" of the Corporation shall mean any corporation or other entity of which securities or other ownership interests entitled to cast at least a majority of the votes that would be entitled to be cast in an election of the board of directors of such corporation or other entity or other persons performing similar functions are beneficially owned, directly or indirectly, by the Corporation or by any corporation or other entity that is otherwise controlled by the Corporation.

(3) The Corporation shall not issue any shares of Series C Preferred Stock except pursuant to the Merger Agreement, a copy of which is on file with the Secretary of the Corporation at its principal executive offices and shall be made available to holders of Series C Preferred Stock without charge upon written request therefor addressed to the Secretary of the Corporation at the address set forth in paragraph (d)(4) above. Notwithstanding the foregoing sentence, nothing contained in the provisions of this Article IV shall prohibit or restrict the Corporation from issuing for any purpose any series of Preferred Stock with rights and privileges similar to, different from, or greater than, those of the Series C Preferred Stock or, subject to the limitations set forth in paragraph (n), from creating other securities senior to, junior to or on a parity with the Series C Preferred Stock.

(f) REACQUIRED SHARES. Any shares of Series C Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares upon their retirement and cancellation shall become authorized but unissued shares of Preferred Stock, without designation as to series, and such shares may be redesignated and reissued as part of any series of Preferred Stock.

(g) LIQUIDATION, DISSOLUTION OR WINDING UP.

(1) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of stock ranking junior (upon liquidation, dissolution or winding up) to the Series C Preferred Stock unless the holders of shares of Series C Preferred Stock outstanding shall have received out of the assets of the Corporation available for distribution to its shareholders after payment or provision for payment of any securities ranking senior to the Series C Preferred Stock, for each share of Series C Preferred Stock, subject to adjustment as hereinafter provided, (A) \$.01 plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment or, (B) if greater than the amount specified in clause (i)(A) of this sentence, an amount equal to 1000 times the aggregate amount to be distributed per share to holders of Class B Common Stock, as the same may be adjusted as hereinafter provided, and (ii) to the holders of stock ranking on a parity upon liquidation, dissolution or winding up with the Series C Preferred Stock, unless simultaneously therewith distributions are made ratably

on the Series C Preferred Stock and all other shares of such parity stock in proportion to the total amounts to which the holders of shares of Series C Preferred Stock are entitled under clause (i)(A) of this sentence and to which the holders of such parity shares are entitled, in each case upon such liquidation, dissolution or winding up. The amount to which holders of Series C Preferred Stock may be entitled upon liquidation, dissolution or winding up of the Corporation pursuant to clause (i)(B) of the foregoing sentence is hereinafter referred to as the "Participation Liquidation Amount" and the multiple of the amount to be distributed to holders of shares of Class B Common Stock upon the liquidation, dissolution or winding up of the Corporation applicable pursuant to said clause to the determination of the Participating Liquidation Amount, as said multiple may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Liquidation Multiple". In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series C Preferred Stock, declare or pay any dividend or make any distribution on Class B Common Stock payable in shares of Class B Common Stock, or effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Class B Common Stock into a greater or lesser number of shares of Class B Common Stock, then in each such case the Liquidation Multiple thereafter applicable to the determination of the Participating Liquidation Amount to which holders of Series C Preferred Stock shall be entitled after such event shall be the Liquidation Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event. Except as provided in this paragraph (g)(1), holders of Series C Preferred Stock shall not be entitled to any distribution in the event of liquidation, dissolution or winding up of the Corporation.

(2) For the purposes of this paragraph (g), none of the following shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation:

(i) the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Corporation;

(ii) the consolidation or merger of the Corporation with or into one or more other corporations or other associations;

(iii) the consolidation or merger of one or more corporations or other associations with or into the Corporation; or

(iv) the participation by the Corporation in a share exchange.

(h) CERTAIN RECLASSIFICATIONS AND OTHER EVENTS.

(1) In the event that holders of shares of Class B Common Stock receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class B Common Stock any share of capital stock of the Corporation (other than any share of Class B Common Stock), whether by way of reclassification, recapitalization, reorganization, dividend or other distribution or otherwise (a "Class B Transaction"), then, and in each such event, the dividend rights, conversion rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series C Preferred Stock shall be adjusted so that after such Transaction the holders of Series C Preferred Stock shall be entitled, in respect of each share of Series C Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such adjustment, (i) to such additional dividends as equal the Dividend Multiple in effect immediately prior to such Class B Transaction multiplied by the additional dividends which the holder of a share of Class B Common Stock shall be entitled to receive by virtue of the receipt in the Class B Transaction of such capital stock, (ii) upon surrender of shares of Series C Preferred Stock for conversion, to the aggregate number and kind of shares of capital stock of the Corporation which, if such shares of Series C Preferred Stock had been converted immediately prior to such Class B Transaction, such holder would have been entitled to receive by virtue of such Class B Transaction and (iii) to such additional distributions upon liquidation, dissolution or winding up of the Corporation as equal the Liquidation Multiple in effect immediately prior to such Class B Transaction multiplied by the additional amount which the holder of a share of Class B Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation by virtue of the receipt in the Class B Transaction of such capital stock, as the case may be, all as provided by the terms of such capital stock.

(2) In the event that holders of shares of Class A Common Stock receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class A Common Stock any share of capital stock of the Corporation (other than any share of Class A Common Stock), whether by way of reclassification, recapitalization, reorganization, dividend or other distribution or otherwise (a "Class A Transaction"), then, and in each such event, the voting rights of the shares of Series C Preferred Stock shall be adjusted so that after such Class A Transaction the holders of Series C Preferred Stock shall be entitled, in respect of each share of Series C Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such adjustment, to such additional voting rights as equal the Vote Multiple in effect immediately prior to such Class A Transaction multiplied by the additional voting rights to which the holder of a share of Class A Common Stock shall be entitled by virtue of the receipt in the Class A Transaction of such capital stock.

(3) In the event that holders of shares of Class B Common Stock receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class B Common Stock any right or warrant to purchase

Class B Common Stock (including as such a right, for all purposes of this paragraph (h)(3), any security convertible into or exchangeable for Class B Common Stock) at a purchase price per share less than the Fair Market Value of a share of Class B Common Stock on the date of issuance of such right or warrant, then and in each such event the dividend rights, conversion rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series C Preferred Stock shall each be adjusted so that after such event the Dividend Multiple, the Conversion Rate and the Liquidation Multiple shall each be the product of the Dividend Multiple, the Conversion Rate and the Liquidation Multiple, as the case may be, in effect immediately prior to such event multiplied by a fraction the numerator of which shall be the number of shares of Class B Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Class B Common Stock which could be acquired upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Class B Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Class B Common Stock which could be purchased, at the Fair Market Value of the Class B Common Stock at the time of such issuance, by the maximum aggregate consideration payable upon exercise in full of all such rights or warrants.

(4) In the event that holders of shares of Class A Common Stock receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class A Common Stock any right or warrant to purchase Class A Common Stock (including as such a right, for all purposes of this paragraph (h)(4), any security convertible into or exchangeable for Class A Common Stock) at a purchase price per share less than the Fair Market Value of a share of Class A Common Stock on the date of issuance of such right or warrant, then and in each such event the voting rights of the shares of Series C Preferred Stock shall be adjusted so that after such event the Vote Multiple shall be the product of the Vote Multiple in effect immediately prior to such event multiplied by a fraction the numerator of which shall be the number of shares of Class A Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Class A Common Stock which could be acquired upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Class A Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Class A Common Stock which could be purchased, at the Fair Market Value of the Class A Common Stock at the time of such issuance, by the maximum aggregate consideration payable upon exercise in full of all such rights or warrants.

(5) In the event that holders of shares of Class B Common Stock of the Corporation receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class B Common Stock any right or warrant to purchase capital stock of the Corporation (other than shares of Class B Common Stock), including as such a right, for all purposes of this paragraph (h)(5), any security convertible into or exchangeable for capital stock of the Corporation (other than Class B Common Stock) at a purchase price per share less than the Fair Market Value of a share of such capital stock on the date of issuance of such right or warrant, then and in each

such event the dividend rights, conversion rights and rights upon liquidation, dissolution or winding up of the Corporation of the shares of Series C Preferred Stock shall each be adjusted so that after such event each holder of a share of Series C Preferred Stock shall be entitled, in respect of each share of Series C Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such event, to receive (i) such additional dividends as equal the Dividend Multiple in effect immediately prior to such event multiplied, first, by the additional dividends to which the holder of a share of Class B Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise, and multiplied again by the Discount Fraction (as hereinafter defined), (ii) such additional conversion rights as equal the Conversion Rate in effect immediately prior to such event multiplied by a fraction the numerator of which shall be the Fair Market Value per share of Class B Common Stock on the date of such event less the Fair Market Value of the portion of the right or warrant so distributed applicable to one share of Class B Common Stock and the denominator of which shall be the Fair Market Value per share of Class B Common Stock on the date of such event and (iii) such additional distributions upon liquidation, dissolution or winding up of the Corporation as equal the Liquidation Multiple in effect immediately prior to such event multiplied, first, by the additional amount which the holder of a share of Class B Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise, and multiplied again by the Discount Fraction. For purposes of this paragraph, the "Discount Fraction" shall be a fraction the numerator of which shall be the difference between the Fair Market Value of a share of the capital stock subject to a right or warrant distributed to holders of shares of Class B Common Stock of the Corporation as contemplated by this paragraph (h)(5) immediately after the distribution thereof and the purchase price per share for such share of capital stock pursuant to such right or warrant and the denominator of which shall be the Fair Market Value of a share of such capital stock immediately after the distribution of such right or warrant.

(6) In the event that holders of shares of Class A Common Stock of the Corporation receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class A Common Stock any right or warrant to purchase capital stock of the Corporation (other than shares of Class A Common Stock), including as such a right, for all purposes of this paragraph (h)(6), any security convertible into or exchangeable for capital stock of the Corporation (other than Class A Common Stock) at a purchase price per share less than the Fair Market Value of a share of such capital stock on the date of issuance of such right or warrant, then and in each such event the voting rights of the shares of Series C Preferred Stock shall be adjusted so that after such event each holder of a share of Series C Preferred Stock shall be entitled, in respect of each share of Series C Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such event, to receive such additional voting rights as equal the Vote Multiple in effect immediately prior to such event multiplied, first, by the additional voting rights to which the holder of a share of Class A Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise, and multiplied

again by the Voting Discount Fraction (as hereinafter defined). For purposes of this paragraph, the "Voting Discount Fraction" shall be a fraction the numerator of which shall be the difference between the Fair Market Value of a share of the capital stock subject to a right or warrant distributed to holders of shares of Class A Common Stock of the Corporation as contemplated by this paragraph (h)(6) immediately after the distribution thereof and the purchase price per share for such share of capital stock pursuant to such right or warrant and the denominator of which shall be the Fair Market Value of a share of such capital stock immediately after the distribution of such right or warrant.

(7) For purposes of this Section 5 of Article IV, the "Fair Market Value" of a share of capital stock of the Corporation on any date shall be deemed to be the average of the daily closing price per share thereof over the 15 consecutive Trading Days (as hereinafter defined) immediately prior to such date; provided, however, that in the event the Fair Market Value of any such share of capital stock is determined during a period which includes any date that is within 15 Trading Days after (i) the ex-dividend date for a dividend or distribution on stock payable in shares of such stock or securities convertible into shares of such stock, or (ii) the effective date of any subdivision, split, combination, consolidation, reverse stock split or reclassification of such capital stock, then, and in each such case, the Fair Market Value shall be appropriately adjusted by the Board of Directors of the Corporation to take into account ex-dividend or post-effective date trading. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way (in either case, as reported in the applicable transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange), or, if the shares are not listed or admitted to trading on the New York Stock Exchange, as reported in the applicable transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares are listed or admitted to trading or, if the shares are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by The Nasdaq Stock Market or such other system then in use, or if on any such date the shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the shares selected by the Board of Directors of the Corporation. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the shares are listed or admitted to trading is open for the transaction of business or, if the shares are not listed or admitted to trading on any national securities exchange, on which the New York Stock Exchange or such other national securities exchange as may be selected by the Board of Directors of the Corporation is open. If the shares are not publicly held or not so listed or traded on any day within the 15 Trading Day period applicable to the determination of Fair Market Value thereof as aforesaid, "Fair Market Value" shall mean the fair market value thereof per share as determined in good faith by the Board of Directors of the Corporation. In either case referred to in the foregoing sentence, the determination of Fair Market Value shall be described in a statement filed with the Secretary of the Corporation.

(i) **CONSOLIDATION, MERGER, ETC.** In case the Corporation shall enter into any consolidation, merger, division, share exchange, combination, sale of all or substantially all of the Corporation's assets, or other transaction in which the shares of Class B Common Stock are exchanged for or changed into other securities, cash and/or any other property, then in any such case each outstanding share of Series C Preferred Stock shall at the same time be similarly exchanged for or changed into the aggregate amount of securities, cash and/or other property (payable in like kind), as the case may be, for which or into which each share of Class B Common Stock is changed or exchanged multiplied by the highest of the Dividend Multiple, the Conversion Rate or the Liquidation Multiple in effect immediately prior to such event; provided, however, that no fractional share or scrip representing fractional shares of any other securities shall be issued. Instead of any fractional interest in a share of such other securities which would otherwise be deliverable pursuant to this paragraph (i), the Corporation will pay to the holder thereof an amount in cash (computed to the nearest cent) equal to the same fraction of the Fair Market Value of a share of such other security or such other amount as may be set forth in the agreement governing the related consolidation, division, share exchange, combination, sale of all or substantially all of the Corporation's assets or other transactions.

(j) **EFFECTIVE TIME OF ADJUSTMENTS.**

(1) Adjustments to the Series C Preferred Stock required by the provisions hereof shall be effective as of the time at which the event requiring such adjustments occurs.

(2) The Corporation shall give prompt written notice to each holder of a share of outstanding Series C Preferred Stock of the effect of any adjustment to the voting rights, dividend rights, conversion rights or rights upon liquidation, dissolution or winding up of the Corporation of such shares required by the provisions hereof. Notwithstanding the foregoing sentence, the failure of the Corporation to give such notice shall not affect the validity or the force or effect of, or the requirement for, such adjustment.

(k) **NO REDEMPTION.** The shares of Series C Preferred Stock shall not be redeemable at the option of the Corporation or any holder thereof. Notwithstanding the foregoing sentence of this paragraph (11), the Corporation may acquire shares of Series C Preferred Stock in any other manner permitted by law, the provisions of this Restated Certificate of Incorporation.

(l) **RANKING.** Unless otherwise provided in this Restated Certificate of Incorporation or in any certificate of designation relating to the determination of a subsequent series of Preferred Stock, the Series C Preferred Stock shall rank senior to the Class B Common Stock and the Class A Common Stock and the Series C Preferred Stock shall rank junior to all other series of Preferred Stock as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding up.

(m) LIMITATIONS. Except as may otherwise be required by law, the shares of Series C Preferred Stock shall not have any powers, preferences or relative, participating, optional or other special rights other than those specifically set forth in this Article IV (as such may be amended from time to time) or otherwise in the Restated Certificate of Incorporation.

(n) AMENDMENT. So long as any shares of the Series C Preferred Stock are outstanding, the Corporation shall not amend this Article IV or the Restated Certificate of Incorporation in any manner which would alter or change the rights, preferences or limitations of the Series C Preferred Stock so as to affect such rights, preferences or limitations in any material respect prejudicial to the holders of the Series C Preferred Stock without, in addition to any other vote of shareholders required by law, the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series C Preferred Stock, voting together as a single class either in writing or by resolution adopted at an annual or special meeting called for the purpose; provided, however, that the creation of another series of Preferred Stock ranking senior to or on a parity with the Series C Preferred Stock as to the payment of dividends or the distribution of assets on liquidation, dissolution or winding up, or which has equivalent or greater voting rights than the Series C Preferred Stock, in each case shall not be deemed to be prejudicial to the holders of the Series C Preferred Stock for the purposes of this paragraph (n).

ARTICLE V

DIRECTORS

(1) *Power of the Board of Directors.* Subject to Article XIII of this Restated Certificate of Incorporation, the property and business of the Corporation shall be controlled and managed by or under the direction of its Board of Directors. In furtherance, and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized, subject in all cases to Article XIII of this Restated Certificate of Incorporation:

(a) To make, alter, amend or repeal the By-Laws of the Corporation; *provided* that no By-Laws hereafter adopted shall invalidate any prior act of the Directors that would have been valid if such By-Laws had not been adopted;

(b) To determine the rights, powers, duties, rules and procedures that affect the power of the Board of Directors to manage and direct the property, business and affairs of the Corporation, including, without limitation, the power to designate and empower committees of the Board of Directors, to elect, appoint and empower the officers and other agents of the Corporation, and to determine the time and place of, and the notice requirements for Board meetings, as well as the manner of taking Board action; and

(c) To exercise all such powers and do all such acts as may be exercised by the Corporation, subject to the provisions of the laws of the State of Delaware, this Restated Certificate of Incorporation, and the By-Laws of the Corporation.

(2) *Number and Qualifications of Directors.* The number of directors constituting the entire Board of Directors shall be fixed from time to time by resolution of the Board of Directors but shall not be less than three nor more than twenty. Directors shall be elected to hold office for a term of one year. As used in this Restated Certificate of Incorporation, the term "entire Board of Directors" means the total number of Directors fixed in the manner provided in this Article V Section (2) and in the By-Laws.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS,
OFFICERS AND OTHERS

(1) *Action Not By or on Behalf of Corporation.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent (including, without limitation, a trustee) of another corporation, partnership, joint venture, trust or other enterprise, against judgments, fines, amounts paid in settlement and expenses (including, without limitation, attorneys' fees), actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) *Action By or on Behalf of Corporation.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have

been adjudged to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability and in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(3) *Successful Defense.* To the extent that a present or former Director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or 2 of this Article VI, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by him in connection therewith.

(4) *Determination of Right to Indemnification in Certain Circumstances.* Any indemnification under Section 1 or 2 of this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former Director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2 of this Article IV. Such determination shall be made, with respect to a person who is a Director or officer at the time of such determination, (1) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such Directors designated by a majority vote of such Directors, even though less than a quorum, or (3) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders of the Corporation entitled to vote thereon.

(5) *Advance Payment of Expenses.*

(a) Expenses (including attorneys' fees) incurred by a Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article.

(b) Expenses (including attorneys' fees) incurred by any other employee or agent in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon such terms and conditions, if any, as the Corporation deems appropriate.

(6) *Not Exclusive.* The indemnification and advancement of expenses provided by, or granted pursuant to, the other sections of this Article VI shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any statute, by-law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his official capacity and as to

action in another capacity while holding such office. Without limiting the foregoing, the Corporation is authorized to enter into an agreement with any Director, officer, employee or agent of the Corporation providing indemnification for such person against expenses, including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement that result from any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, including, without limitation, any action by or in the right of the Corporation, that arises by reason of the fact that such person is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, to the full extent allowed by law, except that no such agreement shall provide for indemnification for any actions that constitute fraud, actual dishonesty or willful misconduct.

(7) *Insurance.* The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving as the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VI.

(8) *Certain Definitions.* For the purposes of this Article VI, (A) any Director, officer, employee or agent of the Corporation who shall serve as a director, officer, employee or agent of any other corporation, joint venture, trust or other enterprise of which the Corporation, directly or indirectly, is or was a stockholder or creditor, or in which the Corporation is or was in any way interested, or (B) any director, officer, employee or agent of any subsidiary corporation, joint venture, trust or other enterprise wholly owned by the Corporation, shall be deemed to be serving as such director, officer, employee or agent at the request of the Corporation, unless the Board of Directors of the Corporation shall determine otherwise. In all other instances where any person shall serve as a director, officer, employee or agent of another corporation, joint venture, trust or other enterprise of which the Corporation is or was a stockholder or creditor, or in which it is or was otherwise interested, if it is not otherwise established that such person is or was serving as such director, officer, employee or agent at the request of the Corporation, the Board of Directors of the Corporation may determine whether such service is or was at the request of the Corporation, and it shall not be necessary to show any actual or prior request for such service. For purposes of this Article VI, references to a corporation include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity. For purposes of this Article VI, references to "other enterprises" shall include employee

benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries, and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VI.

(9) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE VII

DIRECTOR LIABILITY TO THE CORPORATION

(a) A Director's liability to the Corporation for breach of duty to the Corporation or its stockholders shall be limited to the fullest extent permitted by Delaware law as now in effect or hereafter amended. In particular no Director of the Corporation shall be liable to the Corporation or any of 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, as the same exists or hereafter may be amended, or (iv) for any transaction from which the Director derived an improper personal benefit.

(b) Any repeal or modification of the foregoing paragraph (a) by the stockholders of the Corporation entitled to vote thereon shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

(c) If the General Corporation Law of the State of Delaware is amended to authorize corporate action further eliminating or limiting the liability of directors, then a director of the Corporation, in addition to the circumstances in which he is not now liable, shall be free of liability to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

ARTICLE VIII

RESERVATION OF RIGHT TO AMEND CERTIFICATE OF INCORPORATION

Subject to Article XIII of this Restated Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by law, and all the provisions of this Restated Certificate of Incorporation and all rights and powers conferred in this Restated Certificate of Incorporation on stockholders, directors and officers are subject to this reserved power.

Each reference in the Restated Certificate of Incorporation to "the Restated Certificate of Incorporation," "hereunder," "hereof," or words of like import and each reference to the Restated Certificate of Incorporation set forth in any amendment to the Restated Certificate of Incorporation shall mean and be a reference to the Restated Certificate of Incorporation as supplemented and amended through such amendment to the Restated Certificate of Incorporation.

ARTICLE IX

VOTING RIGHTS

(1) *Class A Common Stock.* In addition to any other approval required by law or by this Restated Certificate of Incorporation, the affirmative vote of a majority of the then outstanding shares of Class A Common Stock, voted separately as a class, shall be necessary to approve any consolidation of the Corporation with another corporation, any merger of the Corporation into another corporation or any merger of any other corporation into the Corporation pursuant to which shares of Common Stock are converted into or exchanged for any securities or any other consideration.

(2) *Preferred Stock.* Subject to Article XIII of this Restated Certificate of Incorporation, in addition to any other approval required by law or by this Restated Certificate of Incorporation, each particular series of any class of Preferred Stock shall have such right to vote, if any, as shall be fixed in the resolution or resolutions, adopted by the Board of Directors, providing for the issuance of shares of such particular series.

ARTICLE X

STOCK OWNERSHIP AND THE FEDERAL COMMUNICATIONS LAWS

(1) *Requests for Information.* So long as the Corporation or any of its subsidiaries holds any authorization from the Federal Communications Commission (or any successor thereto), if the Corporation has reason to believe that the ownership, or proposed ownership, of shares of capital stock of the Corporation by any stockholder or any person

presenting any shares of capital stock of the Corporation for transfer into his name (a "Proposed Transferee") may be inconsistent with, or in violation of, any provision of the Federal Communications Laws (as hereinafter defined), such stockholder or Proposed Transferee, upon request of the Corporation, shall furnish promptly to the Corporation such information (including, without limitation, information with respect to citizenship, other ownership interests and affiliations) as the Corporation shall reasonably request to determine whether the ownership of, or the exercise of any rights with respect to, shares of capital stock of the Corporation by such stockholder or Proposed Transferee is inconsistent with, or in violation of, the Federal Communications Laws. For purposes of this Article X, the term "Federal Communications Laws" shall mean any law of the United States now or hereafter in effect (and any regulation thereunder) pertaining to the ownership of, or the exercise of the rights of ownership with respect to, capital stock of corporations holding, directly or indirectly, Federal Communications Commission authorizations, including, without limitation, the Communications Act of 1934, as amended (the "Communications Act"), and regulations thereunder pertaining to the ownership, or the exercise of the rights of ownership, of capital stock of corporations holding, directly or indirectly, Federal Communications Commission authorizations, by (i) aliens, as defined in or under the Communications Act, as it may be amended from time to time, (ii) persons and entities having interests in television or radio stations, daily newspapers and cable television systems or (iii) persons or entities, unilaterally or otherwise, seeking direct or indirect control of the Corporation, as construed under the Communications Act, without having obtained any requisite prior Federal regulatory approval to such control.

(2) *Denial of Rights, Refusal to Transfer.* If any stockholder or Proposed Transferee from whom information is requested should fail to respond to such request pursuant to Section (1) of this Article or the Corporation shall conclude that the ownership of, or the exercise of any rights of ownership with respect to, shares of capital stock of the Corporation, by such stockholder or Proposed Transferee, could result in any inconsistency with, or violation of, the Federal Communications Laws, the Corporation may refuse to permit the transfer of shares of capital stock of the Corporation to such Proposed Transferee, or may suspend those rights of stock ownership the exercise of which would result in any inconsistency with, or violation of, the Federal Communications Laws, such refusal of transfer or suspension to remain in effect until the requested information has been received and the Corporation has determined that such transfer, or the exercise of such suspended rights, as the case may be, is permissible under the Federal Communications Laws, and the Corporation may exercise any and all appropriate remedies, at law or in equity, in any court of competent jurisdiction, against any such stockholder or Proposed Transferee, with a view towards obtaining such information or preventing or curing any situation which would cause any inconsistency with, or violation of, any provision of the Federal Communications Laws.

(3) *Legends.* The Corporation may note on the certificates of its capital stock that the shares represented by such certificates are subject to the restrictions set forth in this Article.

(4) *Certain Definitions.* For purposes of this Article, the word "person" shall include not only natural persons but partnerships, associations, corporations, joint ventures and other entities, and the word "regulation" shall include not only regulations but rules, published policies and published controlling interpretations by an administrative agency or body empowered to administer a statutory provision of the Federal Communications Laws.

ARTICLE XI

TRANSACTIONS WITH DIRECTORS AND OFFICERS

No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose if (a) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or the committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum, or (b) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of such stockholders, or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders entitled to vote thereon. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE XII

COMPROMISE AND REORGANIZATION

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 3 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 class of creditors, and/or of 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, agrees 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 XIII

GOVERNANCE OF THE CORPORATION DURING SPECIFIED PERIOD

(1) *Definitions.* As used in this Article XIII, the following terms shall have the following meanings:

(a) "CBS" shall mean CBS Corporation, a Pennsylvania corporation, immediately prior to the Effective Time.

(b) "CBS Directors" shall mean (i) eight (8) of those directors serving as members of the Board of Directors of CBS on September 6, 1999 (or any Independent Directors elected or appointed prior to the Effective Time to serve as a CBS Director) who are designated as such by the Board of Directors of CBS prior to the Effective Time and (ii) any Replacement CBS Director (as defined in Section 2(b) of this Article XIII).

(c) "CEO" shall mean the Chief Executive Officer.

(d) "COO" shall mean the President and Chief Operating Officer.

(e) "Effective Time" shall mean the time of filing of the Certificate of Merger to which this Certificate of Incorporation is attached.

(f) "Independent Director" shall mean a disinterested, independent person (determined in accordance with customary standards for independent directors applicable to U.S. public companies).

(g) "NAI" shall mean National Amusements, Inc., a Maryland corporation, and its successors or assigns.

(h) "Specified Independent Directors" shall mean the directors of the Corporation first elected after 1993 and who are not management of the Corporation or NAI (together with any replacements of such persons).

(i) "Specified Period" shall mean the period of three years commencing at the Effective Time.

(j) "Stockholder Agreement" shall mean the Stockholder Agreement dated as of September 6, 1999, by and between NAI and CBS, relating to Corporation governance matters.

(k) "Viacom Directors" shall mean the ten (10) directors of the Corporation serving as the Board of Directors of the Corporation immediately prior to the Effective Time (including the Specified Independent Directors).

(2) *Directors.*

(a) Effective immediately at the Effective Time, the Board of Directors shall consist of eighteen (18) directors. The number of directors may be fixed by resolution of the Board from time to time, provided, however, that the size of the Board of Directors may not be changed during the Specified Period without the approval of at least fourteen (14) directors. At the Effective Time, ten (10) directors shall be Viacom Directors and eight (8) directors shall be CBS Directors.

(b) Until the expiration of the Specified Period, the Board of Directors (subject to the fiduciary duties of the directors) shall take all action necessary to ensure that any seat on the Board of Directors held by (i) a CBS Director which becomes vacant is filled promptly by a person qualifying as an Independent Director and designated to fill such seat by a majority of the CBS Directors remaining on the Board of Directors (a "Replacement CBS Director") and (ii) a Specified Independent Director which becomes vacant is filled promptly by an Independent Director who is the chief executive officer, chief operating officer or chief financial officer or former chief executive officer of a Fortune 500 company or a non-U.S. public company of comparable size.

(c) During the Specified Period, all committees of the Board of Directors (other than the Compensation Committee and the Officers Nominating Committee) shall have such number of CBS Directors as equals the total number of members of the Committee multiplied by a fraction, the numerator of which is eight (8) and the denominator of which is eighteen (18), rounded to the closest whole number; provided that in no event shall any committee have (x) fewer than one (1) CBS Director or (y) less than a majority of Viacom Directors.

(d) During the Specified Period, the Board of Directors shall not take any action or fail to take any action which would have the effect of eliminating, limiting, restricting, avoiding or otherwise modifying the effect of the provisions set forth in this Article XIII (e.g., by creating a holding company structure if the certificate of incorporation or similar document of such holding company does not contain equivalent provisions).

(3) *Chairman and Chief Executive Officer.*

(a) At the Effective Time, Sumner Redstone shall remain the Chairman and CEO. In the event that Sumner Redstone is not the CEO at the Effective Time or ceases to be the CEO at any time during the Specified Period, then Mel Karmazin, if he is COO at such time, shall succeed to the position of CEO for the remainder of the Specified Period. During any such period of succession, Mel Karmazin shall continue to exercise the powers, rights, functions and responsibilities of the COO in addition to exercising those of the CEO.

(b) The Chairman shall chair all meetings of the Board of Directors and stockholders at which he is present.

(c) The CEO shall be responsible, in consultation with the COO, for corporate policy and strategy and the COO shall consult on all major decisions with, and shall report directly to, the CEO, during the Specified Period; provided, however, that the CEO shall not exercise any powers, rights, functions or responsibilities of the COO unless Mel Karmazin is the CEO.

(4) *President and Chief Operating Officer.*

(a) At the Effective Time, the President and Chief Operating Officer of the Corporation shall be Mel Karmazin. During the Specified Period, Mel Karmazin may not be terminated or demoted from the position of COO (or, in the event that Sumner Redstone is not the CEO, from the position of CEO) and no COO Functions (as defined below) may be changed without the affirmative vote of at least fourteen (14) directors.

(b) Subject to the requirement that the COO consult with the CEO on all major decisions, the powers, rights, functions and responsibilities of the COO (collectively, the "COO Functions") shall include, without limitation, the following:

(i) supervising, coordinating and managing the Corporation's business, operations, activities, operating expenses and capital allocation;

(ii) matters relating to officers (other than the Chairman, CEO and COO) and employees, including, without limitation, hiring (subject to (A) the specific Board of Directors authority described below with respect to the CFO, the General Counsel and the Controller and (B) Section 5 below), terminating, changing positions and allocating responsibilities of such officers and employees; and

(iii) substantially all of the powers, rights, functions and responsibilities typically exercised by a chief operating officer.

All officers (other than the Chairman, CEO and COO) will report, directly or indirectly, to the COO (this reporting relationship will be deemed a COO Function).

(c) In the event that Mel Karmazin is not COO or CEO, the Board may terminate the COO's employment, eliminate the COO position and the Officers Nominating Committee and reallocate the COO Functions without regard to the other provisions of this Article XVIII.

(5) *Officers Nominating Committee; Compensation Committee.*

(a) Subject to the powers of the Compensation Committee set forth below, during the Specified Period, all powers of the Board of Directors, including, without limitation, the right to hire, elect, terminate, change positions, allocate responsibilities or determine non-equity compensation, with respect to officers and employees, shall be exercised, subject to clauses (b) and (c) below, by, and delegated to, the Officers Nominating Committee of the Board of Directors. The Officers Nominating Committee shall consist solely of the member of the Board of Directors who is the COO, except that in the event Mel Karmazin succeeds to the position of CEO, the sole member of the Officers Nominating Committee shall be the member of the Board of Directors who is the CEO.

(b) The Officers Nominating Committee shall have no powers with respect to the Chairman, CEO and COO, and shall not have the power to fill the positions of Chief Financial Officer, Controller or General Counsel of the Corporation without the approval of the Board of Directors; provided that this provision shall in no way affect the other powers and authorities of the Officers Nominating Committee with respect to the Chief Financial Officer, Controller and General Counsel positions, including, without limitation, the power to terminate employment of persons holding such positions.

(c) The Compensation Committee shall not be required to, or have any power to, approve the annual compensation of (i) any employee if the total value of such employee's annual cash compensation (assuming for this purpose that the actual bonus of each officer and employee is equal to his or her target bonus) is less than \$1 million or (ii) talent (as such term is commonly used in the media or entertainment industries), in each such case which power shall be delegated to the Officers Nominating Committee. The annual compensation of all other officers and employees and any equity or equity-based compensation of any officer or employee must be approved by the Compensation Committee.

(d) The Compensation Committee shall consist of three CBS Directors who are Independent Directors and three non-CBS Directors, two of whom will be the Specified Independent Directors and the other of whom will be an Independent Director.

(e) Any decision or determination of the Officers Nominating Committee may be reversed or overridden by (and only by) the affirmative vote of at least fourteen (14) directors.

(6) *Stockholder Agreement.*

The Stockholder Agreement may not be amended, and no provision thereof may be modified or waived, except with the approval of at least fourteen (14) directors.

(7) *Issuance of Voting Stock.*

During the Specified Period, in addition to any other approval required by law or by this Restated Certificate of Incorporation, the Corporation may not issue (i) additional shares of Class A Common Stock or (ii) any shares of Preferred Stock or any other class or series of stock or securities, in each case with, or convertible into or exchangeable or exercisable for stock or other securities with, the right to vote on any matter on which stockholders are entitled to vote if the result would be that parties bound by the Stockholder Agreement could fail to own at least a majority of the outstanding shares of voting stock of the Corporation.

(8) *Voting.*

During the Specified Period, except for those actions set forth on Annex I to this Restated Certificate of Incorporation, which shall require the approval of the Board of Directors, all action by the Board of Directors shall require the affirmative vote of at least fourteen (14) directors. At all meetings of the Board of Directors a majority of the full Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or this Restated Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(9) *Amendment.*

Until the expiration of the Specified Period the provisions of any Article of this Restated Certificate which refer to this Article XIII, the provisions of this Article XIII, and the provisions of Article VIII of the by-laws of the Corporation, may not be amended, altered, repealed or waived in any respect without the approval of at least fourteen (14) directors.

(10) *Successors.*

During the Specified Period, the provisions of this Article XIII shall be applicable to (i) any successor to the Corporation as the result of a merger, consolidation or other business combination, whether or not the Corporation is the surviving company in such transaction, or otherwise and (ii) any corporation or other entity with respect to which the Corporation or its successor is or becomes a direct or indirect subsidiary, the Board of Directors shall not permit the Corporation to be a party to any transaction which

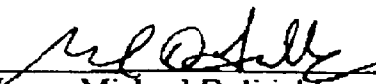
would not comply with the foregoing without the approval of at least fourteen (14) directors.

(11) *Subsidiaries.*

The Board of Directors shall have the right, following consultation with the COO or, if Mel Karmazin is the CEO, the CEO, with respect to any public company which is a subsidiary of the Corporation, to take such steps as the Board of Directors reasonably determines are necessary to implement corporate governance arrangements applicable to such subsidiary in a manner as consistent as practicable with the provisions contained in this Restated Certificate of Incorporation; provided that any such steps shall not vest in the Board of Directors greater power or provide the COO with fewer rights than those provided for in this Restated Certificate of Incorporation.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation, which restates and integrates the provisions of the Restated Certificate of Incorporation of this Corporation as heretofore amended or supplemented, there being no discrepancy between such provisions and the provisions of this Restated Certificate of Incorporation, having been duly adopted by the Board of Directors of the Corporation in accordance with Section 245 of the Delaware General Corporation Law, has been executed by its duly authorized officer this 4th day of May, 2000.

VIACOM INC.

By: 
Name: Michael D. Fricklas
Title: Senior Vice President,
General Counsel and
Secretary

**ANNEX I
TO VIACOM INC. RESTATED
CERTIFICATE OF INCORPORATION**

The provisions of this Annex I shall form a part of, and be incorporated in all respects in, the Restated Certificate of Incorporation to which this Annex I is attached. The following actions shall require the approval of a majority of the directors:

A. Acquisitions, Divestitures, Joint Ventures, Guarantees

- Any acquisition, equity investment or joint venture (each an "Acquisition") by the Corporation or any of its subsidiaries for more than \$25 million.
- Any divestiture or other sale of assets (each a "Divestiture") (not in the ordinary course) by the Corporation or any of its subsidiaries for more than \$25 million (based on purchase price or net book value of assets).
- Any real estate purchase, sale or lease by the Corporation or any of its subsidiaries for more than \$25 million.
- Any guarantee by the Corporation or any of its subsidiaries of an obligation of a third party where the obligation guaranteed is more than \$25 million.
- Notwithstanding the above, any Acquisition or Divestiture by the Corporation or any of its subsidiaries of (a) internet or internet related businesses for more than \$25 million but less than \$100 million, with the value thereof represented by multi-year commitments for advertising, promotion and content licensing, is excluded, so long as the aggregate of such Acquisitions or Divestitures, in each case, does not exceed \$550 million and (b) radio or outdoor advertising businesses for more than \$25 million but less than \$100 million, is excluded, so long as the aggregate of such Acquisitions or Divestitures, in each case, does not exceed \$300 million; provided that (i) any Divestiture of shares of a publicly traded internet or internet related business with a value of up to \$75 million is excluded and shall not be included in the calculation of any of the threshold amounts set forth above, (ii) Board approval may be secured (but is not required) for any transaction of more than \$25 million but less than \$100 million where the regular meeting schedule of the Board so permits (and shall not otherwise be required), (iii) the Board will be provided with information about and a status report on such transactions completed without Board approval and (iv) this limit of authority will be reviewed in 12 months from the Effective Time (as defined in Article XIII of the Restated Certificate) and may be amended only with the approval of 14 members of the Board of Directors.
- Any contract of the Corporation or any of its subsidiaries not in the ordinary course with a value in excess of \$25 million.

- Notwithstanding the above, any of the foregoing transactions that is approved by the Board shall not be included in the calculation of any of the threshold amounts set forth above.

B. Employee Matters

- Employee benefit plans (at the Corporation or a subsidiary): (a) creating a new plan, (b) suspending or terminating an existing plan, (c) any amendment that materially increases cost to the Corporation or subsidiary.
- Entering into any modifications or amendments to the employment agreements with the CEO or the COO.

C. General

- The Annual Report on Form 10-K.
- Proxy statement and notice of meeting (including annual or special meeting date, location, record date for voting).
- Any issuance of Corporation stock, or options, warrants or other similar rights (including stock appreciation rights) or debt or other securities convertible into or exchangeable for Corporation stock.
- Any issuance of debt unless such debt is short term and is within the spending limits of the annual operating budget or is replacing existing debt.
- Annual capital expenditure and annual operating budgets and individual capital expenditure transactions in excess of \$25 million for the Corporation or any of its subsidiaries.
- Any Corporation or subsidiary pays a dividend or repurchases stock from a third party.
- Review and approve any action or transaction where Board action is required by law (other than 141(a) of the Delaware General Corporation Law) or by the terms of the transaction (in all cases other than as specifically set forth in the Restated Certificate of Incorporation).
- Review and approve Board minutes.
- Subject to Article XIII of the Restated Certificate of Incorporation, determine Board administration, including number of directors, meeting schedule, nominees, committees, director compensation, D&O insurance authorization, internal investigations and retention of advisors in connection therewith, and decisions regarding indemnification of individuals.

- Subject to Article XIII of the Restated Certificate of Incorporation, amendments to the Restated Certificate of Incorporation and by-laws of the Corporation.
- Commencement and settlement of major litigation.
- Selection of independent auditors.
- All matters on which the Corporation Board of Directors has historically taken action other than (1) matters relating to the subject matters addressed in this Annex I and not requiring approval of the Board of Directors hereunder and (2) those matters delegated to the COO, including all of the COO Functions (as defined in Article XIII of this Restated Certificate of Incorporation).

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