

12-13-2000



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**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

11-22-2000

U.S. Patent & TMO/TM Mail Rpt Dt. #56

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
- ☒ Change of Name
- ☐ Other
- Effective Date
Month Day Year
09 26 00

Conveying Party

☐ Mark if additional names of conveying parties attached

Name **undoo.com, inc.**

Execution Date
Month Day Year
09 26 00

Formerly

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association
- ☐ Other

☒ Citizenship/State of Incorporation/Organization **Delaware**

Receiving Party

☐ Mark if additional names of receiving parties attached

Name **undoo, inc.**

DBA/AKA/TA

Composed of

Address (line 1) **1A Technology Drive**

Address (line 2)

Address (line 3) **Irvine**

City

California, USA

State/Country

92618

Zip Code

- ☐ Individual ☐ General Partnership ☐ Limited Partnership
- ☒ Corporation ☐ Association
- ☐ Other

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.)

☒ Citizenship/State of Incorporation/Organization **Delaware**

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Mail documents to be recorded with required cover sheet(s) information to:
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**TRADEMARK
REEL: 002193 FRAME: 0919**

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 ☒

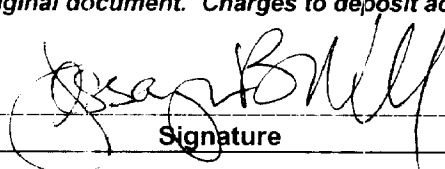
No ☐

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.

Jessamyn Elliott-Brownell

Name of Person Signing



Signature

11/22/00

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

Conveying Party

Enter Additional Conveying Party

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Mark if additional names of conveying parties attached

Execution Date

Month Day Year

Name

Formerly

☐

Individual

☐

General Partnership

☐

Limited Partnership

☐

Corporation

☐

Association

☐

Other

☐

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional 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 the Assignment.)

☐

Corporation

☐

Association

☐

Other

☐

Citizenship/State of Incorporation/Organization

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)

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SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

UNDOO.COM, INC.

a Delaware Corporation

The undersigned, Jedidiah Yuch hereby certifies that:

FIRST: He is the duly elected and acting President, Chief Executive Officer and Chief Financial Officer of undoo.com, inc., a Delaware Corporation (the "Corporation").

SECOND: The Corporation's original Certificate of Incorporation was filed with the Secretary of State of Delaware on November 30, 1999. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on December 10, 1999 under the same name (the "First Restated Certificate").

THIRD: Pursuant to Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation amends and restates the provisions of the First Restated Certificate.

FOURTH: The text of the First Restated Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I.

The name of the corporation (hereinafter the "Corporation") is undoo, inc.

ARTICLE II.

The name and address, including street, number, city and county of the registered agent of the Corporation in the State of Delaware are:

THE CORPORATION TRUST COMPANY
Corporation Trust Center

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 06:00 PM 09/26/2000
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REEL: 002193 FRAME: 0922

1209 Orange Street
Wilmington, New Castle County, Delaware 19801

ARTICLE III.

The nature of the business and the purposes to be conducted and promoted by the Corporation shall be 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.

A. The total number of shares of stock which the Corporation shall have authority to issue is Fifty Six Million Five Hundred Seventy Six Thousand Six Hundred Twenty Nine (56,576,629), to be divided into two classes designated "Common Stock" and "Preferred Stock." The Corporation shall be authorized to issue (a) Fifty Million (50,000,000) shares of Common Stock, par value \$.001 per share, and (b) Six Million Five Hundred Seventy Six Thousand Six Hundred Twenty Nine (6,576,629) shares of Preferred Stock, par value \$.001 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. A total of One Million Five Hundred Thousand (1,500,000) shares of the Preferred Stock authorized by this Second Amended and Restated Certificate of Incorporation shall be designated as "Series A Preferred Stock" and Five Million Seventy Six Thousand Six Hundred Twenty-Nine (5,076,629) shares of the Preferred Stock authorized by the Restated Certificate (the "Restated Certificate") shall be designated as "Series B Preferred Stock" (together with the Series A Preferred Stock, the "Preferred Stock"). The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B). Subject to compliance with applicable protective voting rights that have been or may be granted to the Preferred Stock or any series thereof in the Restated Certificate ("Protective Provisions"), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion of provisions with respect to dividends, liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred Stock or Common Stock.

1. Dividend Provisions.

(a) The holders of the Preferred Stock shall be entitled to receive out of any assets at the time legally available therefor, dividends in cash at the rate per annum of 8.5% (eight and one half percent) per share, respectively, appropriately adjusted for any stock splits, stock dividends, stock combinations, reorganizations, recapitalizations and the like, payable in preference and priority to any payment of any dividend on Common Stock. The right to such dividends on the Preferred Stock shall be cumulative and shall accrue and be paid upon a Liquidation as provided in Section 2 below and upon a Redemption as provided in Section 3 below.

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(c) In the event the Corporation shall propose to take any action of the type described in subsection (a) of this Section 2, the Corporation shall, within twenty (20) days prior to the consummation of such action or twenty (20) days prior to any stockholders' meeting called to approve such action, whichever is earlier, give each holder of shares of Preferred Stock written notice (which may be given by e-mail) of the proposed action. Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Preferred Stock upon consummation of the proposed action and the proposed date of delivery thereof. If any material change in the facts set forth in the notice shall occur, the Corporation shall promptly give written notice (which may be given by e-mail) to each holder of shares of Preferred Stock of such material change.

(d) The Corporation shall not consummate any proposed action of the type described in subsection (a) of this Section 2 before the expiration of twenty (20) days after the mailing (or sending by e-mail) of the initial written notice or ten (10) days after the mailing (or sending by e-mail) of any subsequent written notice, whichever is later; provided, however, that any such 20-day or 10-day period may be shortened upon the written consent of the holders of a majority of the outstanding shares of each series of Preferred Stock.

(e) If the Corporation shall propose to take any action of the type described in subsection (a) of this Section 2 that will involve the distribution of assets other than cash, at the determination of the Board of Directors, the Corporation shall promptly engage independent appraisers with appropriate industry experience to determine the value of the assets to be distributed to the holders of shares of Preferred Stock. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice (which may be given by e-mail) of the appraiser's valuation to each holder of shares of Preferred Stock. Notwithstanding the foregoing, any securities to be distributed to the Corporation's stockholders pursuant to an action of the type described in subsection (a) of this Section 2 shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(A) If traded on a securities exchange or on the Nasdaq National Market System, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the fifteen (15) trading day period ending three (3) trading days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the fifteen (15) trading day period ending three (3) trading days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of

a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(e)(i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Corporation's Board of Directors.

3. Redemption.

(a) For so long as any shares of Preferred Stock remain outstanding and a Liquidation has not occurred, each holder of Preferred Stock may, at its option, on each of September 28, 2005, September 28, 2006, and September 28, 2007 (each a "**Redemption Date**"), demand that this Corporation shall, to the extent it may lawfully do so, redeem the number of shares of such holder's of outstanding shares of Preferred Stock, on each of the Redemption Dates, equal to one-third of the number of shares of Preferred Stock held by such holder as of the first Redemption Date. The redemption request shall be made at least 90 days prior to the first Redemption Date. The price per share payable upon redemption of the Series A Preferred Stock shall be the Original Series A Issue Price (as defined in Section 5) plus an accrued dividend of 8.5% of the Original Series A Issue Price, less aggregate dividends paid with respect to each share of Series A Preferred Stock, compounded per annum for each year (or portion thereof) the Series A Preferred Stock is outstanding (the "**Series A Redemption Price**"). The price per share payable upon redemption of the Series B Preferred Stock shall be the Original Series B Issue Price (as defined in Section 5) plus an accrued dividend of 8.5% of the Original Series B Issue Price, less aggregate dividends paid with respect to each share of Series B Preferred Stock, compounded per annum for each year (or portion thereof) the Series B Preferred Stock is outstanding (the "**Series B Redemption Price**" and together with the Series A Redemption Price, the "**Redemption Prices**"). The Redemption Prices shall be appropriately adjusted for stock splits, stock dividends, stock combinations, reorganizations, recapitalizations and the like.

(b) For so long as any shares of Preferred Stock remain outstanding and a Liquidation has not occurred, each holder of Preferred Stock may, at its option, within thirty (30) days of September 28, 2007 (the "**Final Redemption Date**"), demand by written notice to this Corporation (a "**Redemption Notice**") that this Corporation shall, to the extent it may lawfully do so, redeem from such holder of outstanding shares of Preferred Stock such number of shares of Preferred Stock held by such holder as are identified in the Redemption Notice. The price per share payable upon redemption of the Preferred Stock shall be the greater of (i) the Redemption Price, and (ii) an amount equal to the sum of (A) the applicable fair market value per share of the Preferred Stock determined in accordance with Sections 2(a)(i) and 2(a)(ii) above on the Final Redemption Date plus (B) an accrued dividend of 8.5% of the applicable Original Issue Price, less aggregate dividends paid with respect to each share of Preferred Stock, compounded per annum for each year (or portion thereof) that share of Preferred Stock is outstanding.

(c) If the funds of the Corporation legally available for redemption of shares of Preferred Stock are insufficient to redeem the total number of shares of Preferred Stock requested to be redeemed on such date in accordance with Section 3(a) or Section 3(b) above, the

Corporation shall use those funds that are legally available to redeem the maximum possible number of such shares pro rata (based upon the number of shares of Preferred Stock so requested or so required to be redeemed) among the holders of such shares to be redeemed. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter, when additional funds of the Corporation are legally available for the redemption of shares of Preferred Stock, such funds will immediately be used to redeem the balance of, or if not sufficient to redeem the full balance, redeem on a pro rata basis (based upon the number of shares of Preferred Stock so requested to be redeemed and at the Redemption Prices), the shares that the Corporation has become obligated to redeem on the relevant Redemption Date but which it has not redeemed.

(d) With regard to any redemption that has been requested in accordance with Section 3(a) or Section 3(b) above, for so long as any shares Preferred Stock remain outstanding and a Liquidation has not occurred, on or prior to a Redemption Date or the Final Redemption Date, as the case may be, the Corporation shall deposit an amount equal to the sum of the Redemption Prices for all shares to be redeemed thereon, to the extent the Corporation has funds legally available therefor, with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after each Redemption Date, the Redemption Prices of the shares to their respective holders upon surrender of their share certificates. The balance of any funds deposited by the Corporation pursuant to this Section 3 remaining unclaimed at the expiration of two years following the last Redemption Date shall be returned to the Corporation promptly upon its written request.

(e) With regard to any redemption that has been requested in accordance with Section 3(a) or Section 3(b) above, for so long as any shares of Preferred Stock remain outstanding and a Liquidation has not occurred, on or before the relevant Redemption Date, each holder of shares of Preferred Stock for which redemption has been requested or is required shall surrender such holder's certificates representing the shares to be redeemed in the manner and at the place designated in the redemption notice delivered to the holder by the Corporation and thereupon the Redemption Prices of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled and retired. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Prices or the Corporation is unable to pay the Redemption Prices due to not having sufficient legally available funds (in which case such shares of Preferred Stock shall, as provided in Section 3(c) above, remain outstanding and be entitled to all the rights and preferences provided herein), all rights of the holders of such shares as holders of Preferred Stock (except the right to receive the Redemption Prices (calculated in the manner described in Section 3(a) above) with respect to such shares through the Redemption Date upon surrender of their certificates), shall cease and terminate with respect to such shares. If less than all of the shares represented by such certificate are redeemed, then the Corporation shall issue a new certificate representing the unredeemed shares.

4. Voting Rights.

(a) Vote Other than for the Election of Directors. Except as otherwise required by law, or as set forth herein, each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted on the record date for the vote or consent of stockholders or, if no record date is established, at the date such vote is taken of any consent of stockholders solicited, and shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and shall vote with holders of the Common Stock upon any matter submitted to a vote of stockholders, except those matters required by law or the Restated Certificate to be submitted to a class vote. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded down to the nearest whole number.

(b) Voting for the Election of Directors. The Board of Directors shall not exceed five (5) members. The holders of a majority of the outstanding shares of Common Stock, voting as a class, shall be entitled to elect two (2) directors of the Corporation at each annual or special election of directors. The holders of a majority of the outstanding shares of Preferred Stock and the Common Stock, voting together as a single class, shall be entitled to elect one (1) directors of the Corporation at each annual or special election of directors. The holders of a majority of the outstanding shares of the Series B Preferred Stock, voting separately as a series, shall be entitled to elect one (1) director of the Corporation at each annual or special election of directors. The holders of a majority of the outstanding shares of the Series A Preferred Stock, voting separately as a series, shall be entitled to elect one (1) director of the Corporation at each annual or special election of directors, provided, however, in the event of a Series C Preferred Stock financing event, such right shall extinguish. In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected solely by the holders of a class or series of stock pursuant to this Section 4(b) without the consent of the holders of any other class or series of stock, the remaining directors so elected by that class or series may by affirmative vote of a majority thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of a majority of the shares of that class or series), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected solely by the holders of a class or series of stock without the consent of the holders of any other class or series of stock, or by any directors so elected as provided in the immediately preceding sentence, hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

5. Conversion Rights. The holders of Preferred Stock shall have conversion rights as follows:

(a) Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time at the principal office of the Corporation or any transfer agent for such shares, into fully paid and nonassessable shares of Common Stock of the Corporation. The number of shares of Common Stock into which each share of Preferred Stock may be converted (the "Conversion Rate") shall be determined by dividing the applicable "Original Issue Price" (as set forth below) by the "Conversion Price" (as set forth below) in effect at the time of such conversion. The Series A Original Issue Price per share shall be \$1.00 and the initial Series A Conversion Price shall be \$1.00. The Series B Original Issue Price per share shall be \$1.3789 and the initial Series B Conversion Price shall be \$1.3789.

(b) Each share of Preferred Stock shall be converted into Common Stock automatically in the manner provided herein upon the consummation of a firm commitment underwritten public offering from which (i) the Corporation receives proceeds of not less than \$20,000,000 (net of underwriting commissions and expenses) and (ii) the offering price per share is at least \$4.14 (a "Qualified IPO").

(c) Before any holder of Preferred Stock shall be entitled to convert the same into Common Stock other than pursuant to Section 5(b) hereof, such holder shall surrender the certificate or certificates therefor, duly endorsed in blank or accompanied by proper instruments of transfer, at the principal office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state in writing therein the name or names in which such holder wishes the certificate or certificates for Common Stock to be issued. As soon as practicable thereafter, the Corporation shall issue and deliver at such office to such holder's nominee or nominees, certificates for the number of whole shares of Common Stock to which such holder shall be entitled. No fractional shares of Common Stock shall be issued by the Corporation and all such fractional shares shall be disregarded. In lieu thereof, the Corporation shall pay in cash the fair market value of such fractional share as determined by the Board of Directors of the Corporation. Such conversion shall be deemed to have been made as of the date of such surrender of the Preferred Stock to be converted, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on said date. All accrued but unpaid dividends on any shares of Preferred Stock shall be canceled upon conversion of such shares of Preferred Stock into shares of Common Stock (including any conversion pursuant to Section 5(b)).

(d) In case the Corporation shall at any time (i) subdivide the outstanding Common Stock or (ii) issue a stock dividend on its outstanding Common Stock, the number of shares of Common Stock issuable upon conversion of the Preferred Stock immediately prior to such subdivision or the issuance of such stock dividend shall be proportionately increased by the same ratio as the subdivision or dividend (by appropriate adjustments to the Conversion Prices for the Preferred Stock). In case the Corporation shall at any time combine its outstanding Common Stock, the number of shares of Common Stock

issuable upon conversion of the Preferred Stock immediately prior to such combination shall be proportionately decreased by the same ratio as the combination (by appropriate adjustments to the Conversion Prices of the Preferred Stock). All such adjustments described herein shall be effective at the close of business on the date of such subdivision, stock dividend or combination, as the case may be.

(e) In case of any capital reorganization (other than in connection with a merger or other reorganization in which the Corporation is not the continuing or surviving entity) or any reclassification of the Common Stock of the Corporation, the Preferred Stock shall thereafter be convertible into that number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of the Preferred Stock immediately prior to such reorganization or recapitalization would have been entitled upon such reorganization or reclassification. In any such case, appropriate adjustment (as determined by the Board of Directors of the Corporation) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of Preferred Stock, such that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably may be, in relation to any share of stock or other property thereafter deliverable upon the conversion.

(f) In case

(i) the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to subscribe for or purchase any shares of stock of any class or to receive any other rights; or

(ii) the Corporation shall effect a capital reorganization of the Corporation, reclassification of the capital stock of the Corporation (other than a subdivision or combination of its outstanding Common Stock), consolidation or merger of the Corporation (other than a merger or other reorganization in which the Corporation is not the continuing or surviving entity); then, and in any such case, the Corporation shall cause to be mailed (or e-mailed) to the holders of its outstanding Preferred Stock at least twenty (20) days prior to the date hereinafter specified, a notice stating the date on which a record is to be taken for the purpose of such dividend, distribution or rights, or such action is to be taken in connection with such reorganization, reclassification, merger or consolidation. Such twenty (20) day period may be shortened upon the written consent of the holders of a majority of the outstanding shares of Preferred Stock, voting together as a class.

(g) The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all shares of Preferred Stock from time to time outstanding. The Corporation shall from time to time (subject to obtaining necessary Board of Directors and stockholder approvals), in accordance with the laws of the State of Delaware, increase the authorized amount of its Common Stock if at any time the authorized number of shares of Common Stock remaining

(ii) In the case of an issue or sale for cash of shares of Common Stock, the "consideration actually received" by the Corporation therefor shall be deemed to be the amount of cash received, before deducting therefrom any reasonable commissions or expenses paid by the Corporation.

(iii) In case of the issuance (otherwise than upon conversion or exchange of obligations or shares of stock of the Corporation) of additional shares of Common Stock for a consideration other than cash or a consideration partly other than cash, the amount of the consideration other than cash received by the Corporation for such shares shall be deemed to be the fair value of such consideration as determined in good faith by the Corporation's Board of Directors irrespective of any accounting treatment.

(iv) In case of the issuance by the Corporation in any manner of any rights to subscribe for or to purchase shares of Common Stock, or any options for the purchase of shares of Common Stock or stock convertible into Common Stock, all shares of Common Stock or stock convertible into Common Stock to which the holders of such rights or options shall be entitled to subscribe for or purchase pursuant to such rights or options shall be deemed "outstanding" as of the date of the offering of such rights or the granting of such options, as the case may be, and the minimum aggregate consideration named in such rights or options for the acquisition of the shares of Common Stock or stock convertible into Common Stock covered thereby, plus the consideration, if any, received by the Corporation for such rights or options, shall be deemed to be the "consideration actually received" by the Corporation (as of the date of the offering of such rights or the granting of such options, as the case may be) for the issuance of such shares.

(v) In case of the issuance or issuances by the Corporation in any manner of any obligations or of any shares of stock of the Corporation that shall be convertible into or exchangeable for Common Stock, all shares of Common Stock issuable upon the conversion or exchange of such obligations or shares shall be deemed issued as of the date such obligations or shares are issued, and the amount of the "consideration actually received" by the Corporation for such additional shares of Common Stock shall be deemed to be the total of (x) the amount of consideration received by the Corporation upon the issuance of such obligations or shares, plus (y) the minimum aggregate consideration, if any, other than such obligations or shares, receivable by the Corporation upon such conversion or exchange.

(vi) The amount of the "consideration actually received" by the Corporation upon the issuance of any rights or options referred to in subsection (iv) above or upon the issuance of any obligations or shares which are convertible or exchangeable as described in subsection (v) above, and the amount of the consideration, if any, other than such obligations or shares so convertible or exchangeable, receivable by the Corporation upon the exercise, conversion or exchange thereof shall be determined in the same manner provided in subsections (ii) and (iii) above with respect to the consideration received by the Corporation in case of the issuance of additional shares of Common Stock. On the expiration of any rights or options referred to in subsection (iv), or the termination of any right of conversion or exchange referred to in subsection (v), or any change in the number of shares of Common Stock

deliverable upon exercise of such options or rights or upon conversion of or exchange of such convertible or exchangeable securities, the Conversion Prices then in effect shall forthwith be readjusted to such Conversion Prices as would have been obtained had the adjustments made upon the issuance of such option, right or convertible or exchangeable securities been made upon the basis of the delivery of only the number of shares of Common Stock actually delivered or to be delivered upon the exercise of such rights or options or upon the conversion or exchange of such securities.

(vii) In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons or options or rights not referred to in this Section 6(b), then, in each such case, the holders of the Preferred Stock shall be entitled to the distributions provided for in Section 1 above, and no adjustment to the Conversion Prices provided for in this Section 6 shall be applicable.

(c) Subject to the right of the Corporation to amend its Certificate of Incorporation upon obtaining necessary approvals required by its Certificate of Incorporation and applicable law, this Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 6 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

(d) Upon the occurrence of each adjustment or readjustment of the Conversion Prices pursuant to this Section 6, this Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof, and shall prepare and furnish to each holder of Preferred Stock affected thereby a certificate (which may be given by e-mail) setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate (which may be given by e-mail) setting forth (A) such adjustment or readjustment, (B) the Conversion Price at the time in effect for such series and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares.

(e) No adjustment in a Conversion Price need be made if such adjustment would result in a change in that Conversion Price of less than \$0.001. Any adjustment of less than \$0.001 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.001 or more in a Conversion Price.

(f) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock, and the number of shares of Common Stock to be issued shall

be rounded to the nearest whole share (with one-half being rounded upward). Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

7. Changes.

(a) In addition to any other rights provided by law, so long as shares of Preferred Stock remain outstanding, the Corporation shall not, without first obtaining the approval, by vote or written consent, in the manner provided by law, of the holders of a majority of the total number of shares of Preferred Stock then outstanding, voting together as a single class:

(i) undertake or effect any dissolution, consolidation or merger of the Corporation with or into another corporation (except into or with a wholly-owned subsidiary) or effectuate any transaction or series of related transactions which results in the Corporation's stockholders immediately prior to such transaction not holding at least fifty percent (50%) of the voting power of the surviving or continuing entity;

(ii) license, sell or otherwise dispose of all or substantially all of the Corporation's assets to a third party;

(iii) repurchase or redeem any securities of the Corporation, except as set forth in the Certificate of Incorporation and except for repurchases of securities of the Corporation at their original purchase price from directors, employees or consultants pursuant to agreements approved by the Board of Directors;

(iv) increase the number of authorized members of the Corporation's Board of Directors to a number greater than five (5);

(v) issue any securities of the Corporation to any director or executive officer of the Corporation or to their relatives or other affiliates, except securities issued pursuant to subsections 6(b)(i)(A) through (C) herein;

(vi) establish borrowing from any bank or financial institution in excess of Two Million Dollars (\$2,000,000);

(vii) pledge assets of the Corporation with a fair market value in excess of One Million Dollars (\$1,000,000);

(viii) amend the Certificate of Incorporation of the Corporation;

or

(ix) pay or declare a dividend on any security of the Corporation.

(b) In addition to any other rights provided by law, so long as shares of a particular series of Preferred Stock, remain outstanding, the Corporation shall not, without first obtaining the approval, by vote or written consent, in the manner provided by law, of the holders of a majority of the total number of shares of such series of Preferred Stock, then outstanding, voting as a separate series:

(i) take any action that would alter or change the rights, preferences or privileges of the such series of Preferred Stock;

(ii) increase or decrease (other than by redemption or conversion) the authorized number of shares of such series of Preferred Stock;

(iii) authorize or issue any other equity security senior to or on a parity with such series of Preferred Stock as to voting, dividend and redemption rights or liquidation preferences; or

(iv) take any other action that would adversely affect the value of the such series of Preferred Stock.

8. Status of Redeemed or Converted Stock. In the event any shares of Preferred Stock shall be redeemed or converted pursuant to Section 3 or Section 5 hereof, the shares so redeemed or converted shall be canceled and shall not be issuable by this Corporation.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below:

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this Corporation, the assets of this Corporation shall be distributed as provided in Section 2 of Division B of Article IV hereof.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V.

Except as otherwise provided in this Restated Certificate, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

ARTICLE VI.

Except as otherwise provided in this Restated Certificate, the number of directors of the Corporation shall be fixed from time to time by, or in the manner provided in, the Bylaws or amendment thereof duly adopted by the Board of Directors or by the stockholders.

ARTICLE VII.

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

ARTICLE VIII.

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

ARTICLE IX.

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article 9 by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE X.

To the fullest extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other persons

to which Delaware law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others.

Any repeal or modification of any of the foregoing provisions of this Article X shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such repeal or modification.

ARTICLE XI.

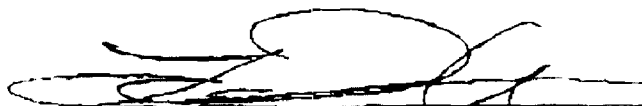
The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

* * *

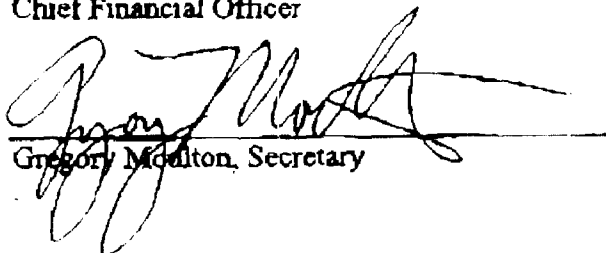
FIFTH: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said Corporation in accordance with Section 228 of the Delaware General Corporation Law.

SIXTH: That said amendment and restatement was duly adopted in accordance with the provisions of Section 242 and 245 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, this Restated Certificate has been executed by the undersigned officers of this Corporation on this 26th day of September, 2000.



Jedidiah Yuch, Chief Executive Officer and
Chief Financial Officer



Gregory Moulton, Secretary