



102003187

Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

NetNumber.com, Inc.

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

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

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

Name: NetNumber, Inc.

Internal Address:

Street Address: 650 Suffolk Street, Suite 307

City: Lowell State: Massachusetts ZIP: 01854

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

If assignee is not domiciled in the United States, a domestic representative designation is attached. Yes No

(Designations must be a separate document from assignment) Additional name(s) & addresses attached? Yes No

3. Nature of conveyance:

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

Execution Date: August 14, 2001

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

A. Trademark Application No.(s)

75909187

76333420

B. Trademark Registration No.(s)

Additional numbers attached? Yes No

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

Name: Steven R. Sprinkle

Internal Address:

Street Address: 1221 South Mopac Expressway

Suite 1400

City: Austin State: TX ZIP: 78746

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41) \$ 65.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

50-0456

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

DO NOT USE THIS SPACE

9. Statement and signature.

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

STEVEN R. SPRINKLE

Signature

Date

1/16/02

Total number of pages including cover sheet, attachments, and document:

03/05/2002 LUMELLEN 0000069 75909187

01 FC:401 02 FC:402

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "NETNUMBER.COM, INC.", CHANGING ITS NAME FROM "NETNUMBER.COM, INC." TO "NETNUMBER, INC.", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF AUGUST, A.D. 2001, AT 12:30 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

2932814 8100

AUTHENTICATION: 1294255

010397958

DATE: 08-14-01

TRADEMARK
REEL: 002453 FRAME: 0728

**RESTATED CERTIFICATE OF INCORPORATION
OF
NetNumber.com, Inc.
a Delaware corporation**

NetNumber.com, Inc., a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), hereby certifies as follows:

A. The present name of the Corporation is NetNumber.com, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on August 12, 1998, and the original name of the Corporation was UCI Corporation.

B. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "*DGCL*"), this Restated Certificate of Incorporation restates, integrates and amends the provisions of the Certificate of Incorporation of this Corporation to effect a name change of the Corporation and to establish the relative rights, preferences, restrictions and other matters relating to the Series A Preferred Stock and the Series B Preferred Stock (each as defined hereafter). Stockholder approval of this Restated Certificate of Incorporation was given by written consent of the stockholders of the Corporation in accordance with Section 228 of the DGCL, and written notice pursuant to Section 228 of the DGCL has been given to those stockholders whose written consent has not been obtained.

C. The text of the Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I

The name of the corporation is NetNumber, Inc. (the "*Corporation*").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is Corporation Service Company.

ARTICLE III

The nature of the business and purpose to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

The Corporation is authorized to issue two classes of shares to be designated respectively "*Common Stock*" and "*Preferred Stock*." The total number of shares of capital stock that the Corporation shall have authority to issue is 126,766,900. The total number of shares of Preferred Stock authorized is 47,766,900, par value \$0.01 per share. The total number of shares of

Common Stock authorized is 79,000,000, par value \$0.0001 per share. Of the Preferred Stock, 15,663,235 shares shall be designated as "*Series A Preferred Stock*," and 32,103,665 shares shall be designated as "*Series B Preferred Stock*." The Series A Preferred Stock and the Series B Preferred Stock are sometimes collectively referred to as the "*Preferred Stock*."

Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or any series thereof ("*Protective Provisions*") in the Corporation's Restated Certificate of Incorporation, as amended from time to time (the "*Certificate*"), the Board of Directors (the "*Board*") is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with the applicable Protective Provisions, but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences, limitations and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion of provisions with respect to 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. Subject to compliance with applicable Protective Provisions, the Board is also authorized to increase or decrease the number of shares of any series (other than the Series B Preferred Stock), prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

A. COMMON STOCK.

1. Voting Rights. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held by such stockholder, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. No holder of Common Stock shall have the right to cumulate his votes in any election of directors.

2. Dividend Rights. Subject to the prior rights of holders of other outstanding securities of the Corporation having prior rights as to dividends, the holders of Common Stock shall be entitled to receive and shall be paid, when and as declared by the Board, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board.

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

B. PREFERRED STOCK. The relative rights, preferences, restrictions and other matters relating to the Series A Preferred Stock and Series B Preferred Stock are as follows:

1. Dividend Rights. The holders of the Series B Preferred Stock shall be entitled to receive a dividend at the rate of \$0.0578 per share (as adjusted for any stock split,

combination, consolidation, stock distributions, or stock dividends or the like with respect to such shares) per annum when, as and if declared by the Board, out of funds legally available therefor, payable in preference and priority to any payment of any dividend on the Series A Preferred Stock or the Common Stock. The right to such cash dividends on the Series B Preferred Stock shall not be cumulative, and no right shall accrue to holders of the Series B Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any prior year. For any other dividends, the Series B Preferred Stock shall participate with the Common Stock and Series A Preferred Stock (and any other class of capital stock) on an as-converted basis. No dividends will be accrued on the Series A Preferred Stock except that, in the event the Corporation elects to declare dividends on its Common Stock (subject to the dividend preference of the Series B Preferred Stock), the holders of the Series A Preferred Stock shall be entitled to receive dividends on the same pro rata basis as the Common Stock and the Series B Preferred Stock, at a rate per share of Series A Preferred Stock equal to the amount holders thereof would be entitled to receive if they had converted the Series A Preferred Stock and had been holders of Common Stock on the record date for such dividends on the Common Stock.

2. Liquidation Preference. The holders of the Series A Preferred Stock and Series B Preferred Stock shall have rights on liquidation as follows:

(a) In the event of any (i) liquidation, dissolution or winding up of the Corporation, (ii) Acquisition, or (iii) Asset Transfer (as such terms in (ii) and (iii) are defined in Section 2(g)) (any such event being a "*Liquidation Event*"), the holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A Preferred Stock or the Common Stock by reason of their ownership of such stock, (A) the amount of \$0.72341 per share for each outstanding share of Series B Preferred Stock (the "*Original Series B Issue Price*") (as adjusted for any stock split, combination, consolidation, stock distributions, or stock dividends or the like with respect to such shares) then held by such holder, and (B) an amount equal to all declared but unpaid non-cumulative dividends on such shares of Series B Preferred Stock held by such holder (the "*Series B Liquidation Preference*"). If the assets and funds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) After payment has been made to the holders of the Series B Preferred Stock of the full preferential amounts to which they shall be entitled per the Series B Liquidation Preference, if any, as aforesaid, out of the remaining assets and funds the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, (A) the amount of \$0.625 per share for each outstanding share of Series A Preferred Stock (the "*Original Series A Issue Price*") (as adjusted for any stock split, combination, consolidation, stock distributions, or stock dividends or the like with respect to such shares) then held by such holder, and (B) an amount equal to all declared but unpaid non-cumulative dividends on such shares of Series A Preferred Stock held by such holder as provided in Section 1 above (the "*Series A Liquidation Preference*"). If after full payment of the Series B

Liquidation Preference, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) After payment has been made to the holders of the Series B Preferred Stock and the Series A Preferred Stock of the full preferential amounts to which they each shall be entitled, if any, as aforesaid, out of the remaining assets and funds the holders of the Common Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of any other class of the capital stock of the Corporation by reason of their ownership of such stock, (A) the amount of \$0.625 per share for each outstanding share of Common Stock (as adjusted for any stock split, combination, consolidation, stock distributions, or stock dividends or the like with respect to such shares) then held by such holder, and (B) an amount equal to all declared but unpaid non-cumulative dividends on such shares of Common Stock held by such holder as provided in Section 1 above (the "*Common Stock Liquidation Preference*"). If the assets and funds thus distributed among the holders of the Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then all remaining assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(d) After payment has been made to the holders of the Series B Preferred Stock, the Series A Preferred Stock and the Common Stock of the full preferential amounts to which they each shall be entitled, if any, as aforesaid, all remaining assets shall be distributed ratably among the holders of the Series B Preferred Stock, the Series A Preferred Stock and the Common Stock, based upon the number of shares of Common Stock then held by such holders or on an as-converted to common stock basis.

(e) Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of the Series B Preferred Stock, Series A Preferred Stock and Common Stock notice in accordance with Section 7 hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail the facts of such Liquidation Event, stating in detail the amount(s) per share of the Series B Preferred Stock, Series A Preferred Stock and Common Stock each holder of the Series B Preferred Stock, Series A Preferred Stock and Common Stock, respectively, would receive pursuant to the provisions of subsections (a), (b) and (c) hereof and stating in detail the facts upon which such amount was determined.

(f) If the Corporation shall propose to take any action of the type described in subsection (a) of this Section 2 which will involve the distribution of assets other than cash, then the Corporation shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of shares of the Series B Preferred Stock, Series A Preferred Stock, and the Common Stock. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice of the appraiser's valuation to each holder of shares of the Series B Preferred Stock, Series A Preferred Stock and Common Stock. Notwithstanding the foregoing, any securities shall be valued as follows:

(i) Securities not subject to an investment letter or other similar restriction on free marketability covered by (ii) below:

(A) if traded on a securities exchange or through the Nasdaq Stock Market, by averaging the closing prices of the securities over the thirty (30)-day period ending three (3) days prior to the closing;

(B) if actively traded over-the-counter, by averaging the closing bid or sale prices (whichever are applicable) over the thirty (30)-day period ending three (3) days prior to the closing; and

(C) if there is no active public market, at the fair market value thereof, as determined by an independent competent appraiser selected by the Board.

(ii) The method of valuation of securities subject to an 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 (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined by an independent competent appraiser selected by the Board.

(g) For purposes of this Section 2, (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions, including, without limitation, any reorganization, merger or consolidation but, excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation (an "*Acquisition*"); or (ii) a sale of all or substantially all of the assets of the Corporation (an "*Asset Transfer*") shall be treated as a Liquidation Event and shall entitle the holders of the Series B Preferred Stock, Series A Preferred Stock, and Common Stock to receive at the closing in cash, securities or other property amounts as specified in subsections (a), (b), (c) and (d) above; provided, however that in the event that the holders of record of the Corporation's outstanding capital stock as constituted immediately prior to any such transaction will, immediately after such transaction (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold more than 50% of the voting power of the surviving or acquiring entity, such transaction shall not be deemed to constitute an Acquisition.

3. Redemption. The holders of Preferred Stock shall have no redemption rights.

4. Conversion Rights. The holders of the Series B Preferred Stock and Series A Preferred Stock shall have the following conversion rights:

(a) Each share of Series B Preferred Stock and Series A 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 principal office of the Corporation or any transfer agent for such shares, into such number of fully paid and nonassessable shares of Common Stock as is determined (i) with respect to each share of Series B Preferred Stock, by dividing the Original Series B Issue Price by the Series B Conversion Price in effect at the time of conversion (the result of such division is hereinafter referred to as the "*Series B Conversion Rate*") and (ii) with

respect to each share of Series A Preferred Stock, by dividing the Original Series A Issue Price by the Series A Conversion Price in effect at the time of conversion (the result of such division is hereinafter referred to as the "*Series A Conversion Rate*"). The "*Series B Conversion Price*" per share of the Series B Preferred Stock shall initially be the Original Series B Issue Price and the "*Series A Conversion Price*" per share of the Series A Preferred Stock shall initially be the Original Series A Issue Price. The Series B Conversion Price and Series A Conversion Price shall be subject to adjustment as provided in Section 4(d) herein.

(b) Subject to Section 4(c), (i) each share of Series B Preferred Stock shall be automatically converted into shares of Common Stock at the then effective Series B Conversion Rate, as applicable, immediately upon the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering with a public offering price per share of at least five (5) times the Original Series B Issue Price per share (as adjusted for any stock split, combination, consolidation, stock distributions, or stock dividends or the like with respect to such shares) and yielding aggregate net proceeds to the Corporation of not less than \$50 million (a "*Qualified Public Offering*"), and (ii) each share of Series A Preferred Stock shall convert automatically at the then effective Series A Conversion Rate upon the Corporation's sale of its Common Stock in a firm commitment underwritten public offering, in the case of both (i) and (ii), pursuant to a registration statement under the Securities Act of 1933, as amended.

(c) Before any holder of Preferred Stock shall be entitled to convert the same into Common Stock, 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 such 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, and in no event later than thirty (30) days after delivery of said certificates, the Corporation shall issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or 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. Such conversion shall be deemed to have been made as of the date of such surrender of the shares of 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. If the conversion is in connection with an underwritten public offering, the conversion shall be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock, shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) The Series B Conversion Price and Series A Conversion Price shall be subject to adjustment in the event the Corporation shall at any time or from time to time after the date that shares of Series B Preferred Stock and Series A Preferred Stock were first issued, subdivide or split the outstanding shares of Common Stock, or issue a stock dividend on its

outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series B Preferred Stock and Series A Preferred Stock. In such event, the Series B Conversion Price and Series A Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, (and the Series B Conversion Rate and Series A Conversion Rate thus proportionately increased). If the number of shares of Common Stock outstanding at any such time is decreased by a combination of the outstanding shares of Common Stock, without an equivalent combination of the Series B Preferred Stock and Series A Preferred Stock, the Series B Conversion Price and Series A Conversion Price, in effect immediately prior to such combination shall be proportionately increased (and the Series B Conversion Rate and Series A Conversion Rate thus proportionately decreased). Each such adjustment shall be effective at the close of business on the date of such subdivision, split, stock dividend or combination, as the case may be.

(e) If at any time after the first date on which a share of Series B Preferred Stock was first issued (the "*Original Issue Date*"), the Corporation shall issue or sell Equity Securities, as defined in subsection (A) below, at a consideration per share (the "*Lower Price*") less than the Series B Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series B Conversion Price (but not the Series A Conversion Price) shall be adjusted to a price determined by multiplying such Series B Conversion Price by a fraction:

(i) the numerator of which shall be an amount equal to the sum of (x) the number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by the then existing Series B Conversion Price, (y) the number of shares of Common Stock issuable upon conversion or exchange of any obligations or of any shares of stock of the Corporation outstanding immediately prior to such issue or sale multiplied by the then existing Series B Conversion Price, and (z) an amount equal to the aggregate "consideration actually received" by the Corporation upon such issue or sale of such Equity Securities, by

(ii) the denominator of which shall be an amount equal to the product of (y) the sum of (A) the number of shares of Common Stock outstanding immediately prior to such issue or sale, (B) the number of shares of Common Stock issuable upon conversion or exchange of any obligations or of any shares of stock of the Corporation outstanding immediately prior to such issue or sale, and (C) the additional shares of Common Stock issued as and/or issuable upon conversion or exchange of the Equity Securities issued in such issuance or sale and (z) the Series B Conversion Price immediately prior to such issue or sale.

For purposes hereof the following provisions shall be applicable:

(A) The term "*Equity Securities*" shall mean any shares of Common Stock, or any right, warrant or option to purchase Common Stock or equity securities convertible into or exchangeable for Common Stock except for (1) up to an aggregate of 9,008,784 shares of Common Stock issued or issuable under either the NetNumber.com, Inc. 1999 Employees and Consultants Incentive Stock Option Plan or the NetNumber.com, Inc. 1999 Stock Plan for Nonemployee-Directors and Special Advisors to the Board with the approval of the Board or any such other stock based compensation awards or grants to officers, directors, full-time employees or consultants of the Corporation pursuant to any stock grant, stock purchase and/or

stock option plans or any other stock incentive program, agreement or arrangement approved with Series B Board Approval (as defined below), (2) up to 2,250,000 shares of capital stock issued in connection with equipment leasing transactions, business combinations, bank financings, strategic partnering transactions, licensing transactions or similar transactions approved with Series B Board Approval, (3) shares of Common Stock issued upon conversion of Series B Preferred Stock, Series A Preferred Stock or upon the exercise or conversion of any exercisable or convertible security outstanding on the Original Issue Date, and (4) securities issued upon any stock split, dividend or recapitalization approved by the Board for which the Series A and Series B Conversion Prices are adjusted pursuant to Section 4(d) above (clauses (1)-(4) may be referred to hereinafter as the "*Anti-Dilution Exceptions*"). For purposes of this subsection (A), "*Series B Board Approval*" means the approval by a majority of the Board including at least two (2) of the directors nominated by the holders of the Series B Preferred Stock. With respect to clause (2) of this subsection (A), the Corporation may issue in excess of 2,250,000 shares of stock at a price below the Series B Conversion Price in effect immediately prior to the time of such issue or sale without such additional shares being Equity Securities under this subsection (A) with the unanimous approval of the directors nominated by the Series B Preferred Stock.

(B) 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 commissions or expenses paid by the Corporation.

(C) 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 Board; provided, however, that such determination by the Board include at least one director nominated by the holders of the Series B Preferred Stock unless determined by an independent competent appraiser selected by the Board.

(D) 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 (collectively, "*Options*"), all shares of Common Stock or stock convertible into Common Stock to which the holders of such Options shall be entitled to subscribe for or purchase pursuant to such 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 Options for the shares of Common Stock or stock convertible into Common Stock covered thereby, plus the consideration, if any, received by the Corporation for such Options, shall be deemed to be the "consideration actually received" by the Corporation (as of the date of the offering of such Options or the granting of such Options, as the case may be) for the issuance of such shares.

(E) 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 (collectively, "*Convertible Securities*"), all shares of Common Stock issuable upon the conversion or exchange of such

Convertible Securities shall be deemed issued as of the date such Convertible Securities 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 Convertible Securities plus (y) the minimum aggregate consideration, if any, other than such Convertible Securities, receivable by the Corporation upon such conversion or exchange.

(F) No further adjustments in the Series B Conversion Price shall be made upon the subsequent issue of shares of Common Stock issuable upon the exercise of Options or upon the conversion or exchange of Convertible Securities for which a prior adjustment was made pursuant to subsection (D) or subsection (E) above.

(G) On the expiration of any Options referred to in subsection (D), or the termination of any Convertible Securities referred to in subsection (E), or any change in the number of shares of Common Stock deliverable upon exercise of such Options or upon conversion of or exchange of such Convertible Securities, the Series B Conversion Price then in effect shall forthwith be readjusted to such Series B Conversion Price as would have been obtained had the adjustments made upon the issuance of such Options or Convertible 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 Options or upon the conversion or exchange of such Convertible Securities. No readjustment pursuant to this subsection (G) shall have the effect of increasing the Series B Conversion Price to an amount that exceeds the Original Series B Conversion Price in effect on the date of the corresponding decrease described in this subsection (G).

(H) 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 subsection (e), then, in each such case, the holders of the Preferred Stock shall be entitled to the distributions provided for in Section 2 above, and no adjustment to the Conversion Price provided for in this subsection (e) shall be applicable.

(f) If the Common Stock issuable upon conversion of the Series A Preferred Stock or the Series B Preferred Stock, as applicable, shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision, split or combination of shares provided in subsection 4(d) or a merger or other reorganization treated as an Acquisition pursuant to Section 2), the Series B Conversion Price and the Series A Conversion price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock and the Series B Preferred Stock, as the case may be, shall be convertible into, in lieu of the number shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock and the Series B Preferred Stock, as the case may be, immediately before that change.

(g) The Corporation will not, by amendment of this Certificate 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 the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series B Preferred Stock and Series A Preferred Stock against impairment.

(h) Upon the occurrence of each adjustment or readjustment of the Series B Conversion Price and Series A Conversion Price pursuant to this Section 4, the Corporation shall promptly compute such adjustment or readjustment in accordance with the terms hereof, and shall prepare and furnish to each holder of Series B Preferred Stock and Series A Preferred Stock affected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Stock or Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustment or readjustment, (ii) the Series B Conversion Price or Series A Conversion Price, at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Series B Preferred Stock or Series A Preferred Stock.

(i) 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 the Series B Preferred Stock and Series A Preferred Stock the full number of shares of Common Stock deliverable upon the conversion of all Series B Preferred Stock and Series A Preferred Stock from time to time outstanding. The Corporation shall from time to time use its best efforts to obtain necessary director and stockholder action, in accordance with the laws of the State of Delaware, to increase the authorized amount of its Common Stock if at any time the authorized number of shares of its Common Stock remaining unissued shall not be sufficient to permit the conversion of all of the shares of Series B Preferred Stock and Series A Preferred Stock at the time outstanding.

5. Voting Rights. The holders of the Series B Preferred Stock and Series A Preferred Stock shall have voting rights as follows:

(a) Except as otherwise set forth in this Section 5, each holder of shares of Series B Preferred Stock and Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series B Preferred Stock and Series A Preferred Stock could be converted on the record date for the vote or consent of stockholders and shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Series B Preferred Stock and Series A 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, as a single class, upon any matter submitted to a vote of stockholders, except as provided in this Certificate or by separate written agreement and those matters required by law to be submitted to a class vote. Fractional votes by the holders of Series B Preferred Stock and Series A 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 Series B Preferred Stock, and Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number. No holder of Preferred Stock shall have the right to cumulate his votes in any election of directors.

(b) So long as at least 2,500,000 shares of Series B Preferred Stock are 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 at least seventy-five percent (75%) of the then outstanding shares of Series B Preferred Stock, voting together as a single class take any action that:

(i) adversely alters or changes the rights, preferences or privileges of the Series B Preferred Stock;

(ii) except as provided in (iii) immediately below or in accordance with an Anti-Dilution Exception, increases or decreases the authorized number of shares of the Corporation's capital stock;

(iii) authorizes, creates (by reclassification or otherwise) or issues any new class or series of shares with any rights as to dividends or liquidation preference senior to or on a parity with those of the then outstanding Series B Preferred Stock, unless such shares are authorized by the Board and issued at a price higher than \$1.44682 per share;

(iv) results in any Liquidation Event unless the holders of Series B Preferred Stock would receive more than \$2.17023 per share of Series B Preferred Stock (a "*Qualified Liquidation Event*");

(v) increases or decreases the authorized size of the Board of the Corporation (except as expressly set forth in that certain Stockholders Agreement entered into by and among the Corporation and certain of its stockholders dated August ___, 2001);

(vi) results in the redemption or repurchase of any shares of Common Stock (other than pursuant to equity incentive agreements with employees giving the Corporation the right to repurchase shares upon the termination of services) or Series A Preferred Stock;

(vii) results in the payment or declaration of any dividend on any shares of Common Stock or Series A Preferred Stock;

(viii) involves a material change in the Corporation's principal line(s) of business;

(ix) relates to or would result in the incurrence by the Corporation of indebtedness for borrowed money (including in connection with capitalized leases and similar financing arrangements and guaranties of the obligations of others) outstanding at any one time during any fiscal year (a) in excess of \$2 million in connection with one (or a series of related) transactions or \$5 million in the aggregate or (b) not made in accordance with signatory rules approved by the Corporation's Board;

(x) relates to any acquisition or disposition of (A) any line of business or (B) assets or securities in excess of \$2 million, in each case not in the ordinary course of business; or

(xi) whether or not prohibited by the terms of the Series B Preferred Stock, impairs or circumvents a right of the Series B Preferred Stock.

(c) So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting together as a class, alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares of such series.

6. Status of Converted Stock. In the event any shares of Series B Preferred Stock or Series A Preferred Stock shall be converted pursuant to Section 4 hereof, the shares of Series B Preferred Stock or Series A Preferred Stock so converted shall be cancelled and shall return to the status of authorized, but undesignated shares of Preferred Stock.

7. Notice. In the event that (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or (ii) any Liquidation Event (as defined in Section 2) or any public offering of the Corporation's Common Stock becomes reasonably likely to occur, the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Series B Preferred Stock and Series A Preferred Stock at least ten (10) business days prior to such record date specified therein or the expected effective date of any such transaction, whichever is earlier, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Liquidation Event or public offering is expected to become effective, and (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event.

ARTICLE V

The Corporation is to have a perpetual existence.

ARTICLE VI

Election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

ARTICLE VII

All of the powers of the Corporation, insofar as the same may be lawfully vested by this Certificate in the Board, are hereby conferred upon the Board.

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to make, amend or repeal from time to time the bylaws of the Corporation, subject to the power of the stockholders of the Corporation entitled to vote thereon to adopt, amend or repeal the bylaws of the Corporation.

ARTICLE VIII

No person shall be personally liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as a director of the Corporation, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for any acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL hereafter is amended to authorize further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended DGCL. Any repeal or modification of this paragraph by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE IX

A. *Mandatory Indemnification.* Each person who at any time is or was a director or officer of the Corporation, and is threatened to be or is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratve or investigative (a "*Proceeding*"), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, member, employee, trustee, agent or similar functionary of another domestic or foreign corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other for-profit or non-profit enterprise, whether the basis of a Proceeding is an alleged action in such person's official capacity or in another capacity while holding such office, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, or any other applicable law as may from time to time be in effect (but, in the case of any such amendment or enactment, only to the extent that such amendment or law permits the Corporation to provide broader indemnification rights than such law prior to such amendment or enactment permitted the Corporation to provide), against all expense, liability and loss (including, without limitation, court costs and attorneys' fees, judgments, fines, excise taxes or penalties, and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person in connection with a Proceeding, and such indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation or a director, officer, partner, venturer, proprietor, member, employee, trustee, agent or similar functionary of another domestic or foreign corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other for-profit or non-profit enterprise, and shall inure to the benefit of such person's heirs, executors and administrators. The Corporation's obligations under this Section A include, but are not limited to, the convening of any meeting, and the consideration of any matter thereby, required by statute in order to determine the eligibility of any person for indemnification.

B. *Prepayment of Expenses.* Expenses incurred by a director or officer of the Corporation in defending a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding to the fullest extent permitted by, and only in compliance with, the DGCL or any other applicable laws as may from time to time be in effect, including, without

limitation, any provision of the DGCL which requires, as a condition precedent to such expense advancement, the delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under Section A of this Article IX or otherwise. Repayments of all amounts so advanced shall be upon such terms and conditions, if any, as the Corporation's Board deems appropriate.

C. *Vesting.* The Corporation's obligation to indemnify and to prepay expenses under Sections A and B of this Article IX shall arise, and all rights granted to the Corporation's directors and officers hereunder shall vest, at the time of the occurrence of the transaction or event to which a Proceeding relates, or at the time that the action or conduct to which such Proceeding relates was first taken or engaged in (or omitted to be taken or engaged in), regardless of when such Proceeding is first threatened, commenced or completed. Notwithstanding any other provision of this Certificate or the Bylaws of the Corporation, no action taken by the Corporation, either by amendment of this Certificate or the Bylaws of the Corporation or otherwise, shall diminish or adversely affect any rights to indemnification or prepayment of expenses granted under Sections A and B of this Article IX which shall have become vested as aforesaid prior to the date that such amendment or other corporate action is effective or taken, whichever is later.

D. *Enforcement.* If a claim under Section A or Section B or both Sections A and B of this Article IX is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit in a court of competent jurisdiction against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such suit (other than a suit brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the DGCL or other applicable law to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. The failure of the Corporation (including its Board, independent legal counsel, or stockholders) to have made a determination prior to the commencement of such suit as to whether indemnification is proper in the circumstances based upon the applicable standard of conduct set forth in the DGCL or other applicable law shall neither be a defense to the action nor create a presumption that the claimant has not met the applicable standard of conduct. The termination of any 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 such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal Proceeding, had reasonable cause to believe that his conduct was unlawful.

E. *Nonexclusive.* The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, bylaw, other provisions of this Certificate, agreement, vote of stockholders or

disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

F. *Permissive Indemnification.* The rights to indemnification and prepayment of expenses which are conferred to the Corporation's directors and officers by Sections A and B of this Article IX may be conferred upon any employee or agent of the Corporation if, and to the extent, authorized by the Board.

G. *Insurance.* The Corporation shall have power to purchase and maintain insurance, at its expense, on behalf of any person who 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, partner, venturer, proprietor, member, employee, trustee, agent or similar functionary of another domestic or foreign corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other for-profit or non-profit enterprise against any expense, liability or loss asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the provisions of this Article IX, the Corporation's Bylaws, the DGCL or other applicable law.

H. *Implementing Arrangements.* Without limiting the power of the Corporation to procure or maintain insurance or other arrangement on behalf of any of the persons as described in Section G of this Article IX, the Corporation may, for the benefit of persons eligible for indemnification by the Corporation, (i) create a trust fund, (ii) establish any form of self-insurance, (iii) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Corporation, or (iv) establish a letter of credit, guaranty or surety arrangement.

ARTICLE X

The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate in its present form or as hereafter amended are granted subject to the rights reserved in this article.

ARTICLE XI

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 § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under § 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, agree to any compromise or arrangement and to any reorganization of this Corporation as 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.

D. This Restated Certificate of Incorporation has been duly approved by the Board.

E. This Restated Certificate of Incorporation has been duly adopted by the stockholders of the Corporation in accordance with the provisions of Sections 242 and 245 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate of Incorporation to be signed by its Chief Executive Officer on August 14, 2001.

/s/ Glenn Marschel
Glenn Marschel, Chief Executive Officer