

05-24-2000

**PATENT**



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RECORDATION FORM COVER SHEET  
PATENTS ONLY

OPR/FINANCE

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
- Merger
- Security Agreement
- Change of Name
- Other \_\_\_\_\_

*U.S. Government*

(For Use ONLY by U.S. Government Agencies)

- Departmental File
- Secret File

Attorney Docket No: 03442

**Conveying Party (ies)**

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name (1st party) Soft Video, Inc.

Name (2nd party) \_\_\_\_\_

Name (3rd party) \_\_\_\_\_

Name (4th party) \_\_\_\_\_

**Receiving Party**

Mark if additional names of receiving parties attached

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 is attached. (Designation must be a separate document from Assignment.)

Name (line 1) Presenter.com, Inc.

Name (line 2) \_\_\_\_\_

Address (line 1) 10 Almaden Boulevard

Address (line 2) \_\_\_\_\_

Address (line 3) San Jose California 95113

City State/Country Zip Code

**Domestic Representative Name and Address**

(Complete only if receiving party is not domiciled in the United States)

Enter for the first Receiving Party only.

Name \_\_\_\_\_

Address (line 1) \_\_\_\_\_

Address (line 2) \_\_\_\_\_

Address (line 3) \_\_\_\_\_

Address (line 4) \_\_\_\_\_

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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**PATENT**

**REEL: 010799 FRAME: 0150**

**Correspondent Name and Address**

**Area Code and Telephone Number** \_\_\_\_\_

Name Blakely, Sokoloff, Taylor & Zafman LLP

Address (line 1) 12400 Wilshire Blvd.

Address (line 2) Los Angeles, California 90025-1026

Address (line 3) \_\_\_\_\_

Address (line 4) \_\_\_\_\_

**Pages**

Enter the total number of pages of the attached conveyance document.

#

2

**Application Number (s) or Patent Number (s)**

Mark if additional numbers attached

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

**Patent Application Number (s)**

<u>09/096,720</u>	<u>09/096,726</u>	<u>09/096,487</u>
<u>09,265,488</u>	<u>09/339,475</u>	_____
_____	_____	_____

**Patent Number (s)**

_____	_____	_____
_____	_____	_____
_____	_____	_____

Month Day Year

If this document is being filed together with a **new** Patent Application, enter the date the patent application was signed by the first named executing inventor.

\_\_\_\_\_

**Patent Cooperation Treaty (PCT)**

Enter PCT application number only if a  
U.S. Application Number has not been  
assigned.

PCT _____	PCT _____	PCT _____
PCT _____	PCT _____	PCT _____

**Number of Properties**

Enter the total number of properties involved.

#

\_\_\_\_\_

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 40.00

Method of Payment:  
Deposit Account

Enclosed

Deposit Account

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

Deposit Account Number: # 06-2666

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.*

Thomas C. Webster

46,154

Thomas Webster

5-5-00

Name of Person Signing

Registration No.

Signature

Date

Mail documents to be recorded with required cover sheet(s) information to:  
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State of Delaware  
Office of the Secretary of State

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PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SOFTNETWORKS, INC.", CHANGING ITS NAME FROM "SOFTNETWORKS, INC." TO "PRESENTER.COM, INC.", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF NOVEMBER, A.D. 1999, AT 9 O'CLOCK A.M.

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



2860309 8100

991506628

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

Edward J. Freel, Secretary of State

AUTHENTICATION: 0105349

DATE: 11-29-99

PATENT  
REEL: 010799 FRAME: 0152

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
SOFTNETWORKS, INC.

SoftNetworks, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware DOES HEREBY CERTIFY:

I: The original Certificate of Incorporation of SoftNetworks, Inc. (founded as SoftVideo, Inc.) was filed with the Secretary of State of Delaware on March 9, 1998.

II: The Restated Certificate of Incorporation of SoftNetworks, Inc. has been duly adopted in accordance with the provisions of Sections 245 and 242 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation and shall be amended and restated to read in full as follows:

FIRST: The name of the corporation (hereinafter called the "Corporation") is hereby amended to read as Presenter.com, Inc. The name of the Corporation was formerly SoftNetworks, Inc.

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1013 Centre Road, City of Wilmington, County of New Castle, and the name of the registered agent of the Corporation in the State of Delaware at such address is Corporation Service Company.

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

FOURTH:

A. This Corporation is authorized to issue two classes of shares to be designated respectively Preferred Stock ("Preferred Stock") and Common Stock ("Common Stock"). The total number of shares of capital stock that the Corporation is authorized to issue is Eighty Million (80,000,000). The total number of shares of Preferred Stock this Corporation shall have authority to issue is Five Million (5,000,000). The total number of shares of Common Stock this Corporation shall have authority to issue is Seventy-Five Million (75,000,000). The Preferred Stock shall have a par value of \$0.001 per share and the Common Stock shall have a par value of \$0.001 per share.

B. The Preferred Stock shall be divided into series. The first series shall consist of Eight Hundred Thousand (800,000) shares and is designated "Series A Preferred Stock." The second series shall consist of Two Million Five Hundred Thousand (2,500,000) shares and is designated "Series B Preferred Stock."

The remaining shares of Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the "Board of Directors") is

expressly authorized to provide for the issue of all or any of the remaining shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter, for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such shares (a "Preferred Stock Designation") and as may be permitted by the General Corporation Law of the State of Delaware. The Board of Directors is also expressly authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series other than the Series A Preferred Stock and Series B Preferred Stock subsequent to the issue of shares of such series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

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

1. Dividends.

a. The holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive dividends at the rate of \$0.10 per share and \$0.26 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, respectively, payable out of funds legally available therefor. Such dividends shall be payable only when, as, and if declared by the Board of Directors and shall be non-cumulative.

No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid on any Common Stock of the Corporation during any fiscal year of the Corporation until dividends in the total amount of \$0.10 per share and \$0.26 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) on the Series A Preferred Stock and Series B Preferred Stock, respectively, shall have been paid or declared and set apart during that fiscal year and any prior year in which dividends accumulated but remain unpaid.

b. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case the holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though the holders of the Series A Preferred Stock and Series B Preferred Stock were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock and Series B Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

## 2. Liquidation Preference.

a. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series A Preferred Stock and 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 Common Stock by reason of their ownership thereof, the amount of \$1.00 per share and \$2.60 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), respectively, plus all declared but unpaid dividends on such share for each share of Series A Preferred Stock or Series B Preferred Stock then held by them. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock and 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 A Preferred Stock and Series B Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

b. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and subject to the payment in full of the liquidation preferences with respect to the Series A Preferred Stock and Series B Preferred Stock as provided in subparagraph (a) of this Section C.2, the entire remaining assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Common Stock in proportion to the shares of Common Stock then held by them.

c. For purposes of this Section C.2, (i) any acquisition of the Corporation by means of merger or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary (other than a mere reincorporation transaction) or (ii) a sale of all or substantially all of the assets of the Corporation, shall be treated as a liquidation, dissolution or winding up of the Corporation and shall entitle the holders of Series A Preferred Stock to receive at the closing in cash, securities or other property (valued as provided in Section C.2(d) below) amounts as specified in Section C.2(a) above.

d. Whenever the distribution provided for in this Section C.2 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by an independent competent appraiser engaged by the Board of Directors. The Corporation shall give prompt written notice of such appraiser's valuation to all stockholders.

## 3. Voting Rights: Directors.

a. Each holder of shares of the Series A Preferred Stock and Series B 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 A Preferred Stock and Series B Preferred Stock could be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and shall be entitled to notice of any

stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Series A Preferred Stock and Series B Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

b. The Board of Directors shall consist of not less than three nor more than nine members, as determined from time to time by vote of the Board of Directors. The number of directors initially shall be five.

4. Conversion. The holders of the Series A Preferred Stock and Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

a. Right to Convert. Each share of Series A Preferred Stock and Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.00 or \$2.60, respectively, by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series A Preferred Stock (the "Series A Conversion Price") shall initially be \$1.00 per share of Common Stock and the price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series B Preferred Stock (the "Series B Conversion Price") shall initially be \$2.60 per share of Common Stock. Such initial Series A Conversion Price and Series B Conversion Price shall be adjusted as hereinafter provided.

b. Automatic Conversion. Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective Series A Conversion Price or Series B Conversion Price upon the earlier of (i) the date specified by written consent or agreement of holders of at least two-thirds (2/3) of the shares of such Series then outstanding, or (ii) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act") other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Corporation, at a public offering price (prior to underwriters' discounts and expenses) equal to or exceeding \$3.00 per share of Common Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) and the aggregate proceeds to the Corporation and/or any selling Stockholders (after deduction for underwriters' discounts and expenses relating to the issuance, including without limitation fees of the Corporation's counsel) of which exceed \$7,500,000.

c. Mechanics of Conversion.

(i) Before any holder of Series A Preferred Stock or Series B Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the

Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock or Series B Preferred Stock a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock or Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock or Series B Preferred Stock for conversion, 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 Series A Preferred Stock or Series B Preferred Stock shall not be deemed to have converted such Series A Preferred Stock or Series B Preferred Stock until immediately prior to the closing of such sale of securities.

d. Adjustments to Series A Conversion Price and Series B Conversion Price for Certain Diluting Issues.

(i) Special Definitions. For purposes of this Section C.5(d), the following definitions apply:

(1) "Options" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (defined below).

(2) "Original Issue Date" shall mean the date on which a share of Series B Preferred Stock was first issued.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock, Series A Preferred Stock and Series B Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section C.5(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of Series A Preferred Stock and Series B Preferred Stock;



(B) to officers, directors or employees of, or consultants to, the Corporation pursuant to stock option or stock purchase plans or agreements on terms approved by the Board of Directors;

(C) as a dividend or distribution on Series A Preferred Stock and Series B Preferred Stock;

(D) for which adjustment of the Series A Conversion Price or Series B Conversion Price is made pursuant to Section C.4(e); or

(E) upon the exercise of warrants to purchase no more than 20,000 shares of Common Stock, provided that such warrants are issued by the Company to third parties in commercial transactions and regardless of whether such warrants were issued by the Company prior to the date hereof or thereafter.

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price for a series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section C.4(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustments in the Series A Conversion Price and Series B Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price or Series B Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such

increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series A Conversion Price or Series B Conversion Price shall effect Common Stock previously issued upon conversion of the Series A Preferred Stock or Series B Preferred Stock, respectively);

(3) Upon the expiration of any Options or the termination of any rights to convert any Convertible Security, the Series A Conversion Price and Series B Conversion Price, to the extent in any way affected by or computed using such Options or rights to convert Convertible Securities, shall be recomputed to reflect the issuance of only the number of Additional Shares of Common Stock (and Options and Convertible Securities that remain in effect) actually issued upon the exercise of such Options or upon the conversion or exchange of such Convertible securities.

(4) no readjustment pursuant to clause (2) or (3) above shall have the effect of increasing the Series A Conversion Price or Series B Conversion Price to an amount which exceeds the lower of (a) the Series A Conversion Price or Series B Conversion Price on the original adjustment date, or (b) the Series A Conversion Price or Series B Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation, at any time after the Original Issue Date, shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section C.4(d)(iii)) without consideration or for a consideration per share less than the Conversion Price with respect to any series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Series A Preferred Stock, Series B Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

(v) Determination of Consideration. For purposes of this Section C.4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section C.4(d)(iii), relating to Options and Convertible Securities shall be determined by dividing

(A) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

e. Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that this Corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for any series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that this Corporation shall

declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

f. Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series A Preferred Stock and Series B Preferred Stock 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 or combination of shares provided for in Section C.4(e) above or a merger or other reorganization referred to in Section C.2(c) above), the Conversion Price then in effect for such series of Preferred Stock shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock and Series B Preferred Stock shall be convertible into, in lieu of the number of 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 Series B Preferred Stock immediately before that change.

g. No Impairment. The 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 the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section C.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 the Series A Preferred Stock and Series B Preferred Stock against impairment.

h. Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section C.4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock and Series B Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer 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 A Preferred Stock or Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price for such series of Preferred Stock 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 the Series A Preferred Stock or Series B Preferred Stock.

i. Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or

other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or to sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up;

Then, in connection with each such event, the Corporation shall send to the holders of Series A Preferred Stock and Series B Preferred Stock: (1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and (2) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

j. Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Series A Preferred Stock and Series B Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

k. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock and Series B Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock and Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock and Series B Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate.

l. Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Series A Preferred Stock and Series B Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock or Series B Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

m. Notices. Any notice required by the provisions of this Section C.4 to be given to the holders of shares of Series A Preferred Stock and Series B

Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. Restrictions and Limitations.

a. So long as any shares of Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of the Preferred Stock, voting together as a single class:

(i) Redeem, purchase, or otherwise acquire for value (or pay into or set aside for a sinking fund for such purposes) any share or shares of Preferred Stock otherwise than by conversion in accordance with Section C.4 hereof;

(ii) Redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose), any of the Common Stock, provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment; or

(iii) Authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) or any debt security senior to or on a parity with the Preferred Stock as to dividend rights or liquidation preferences.

b. So long as at least 100,000 shares of Series A Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock, voting together as a single class:

(i) issue any additional shares of Series A Preferred Stock;

(ii) effect a merger of the Corporation or a sale of all or substantially all of its assets in which the consideration paid to shareholders does not equal or exceed (1) \$.50 per share on a fully-diluted basis, if such merger will be consummated on or before May 20, 1999, or (2) if such merger will be consummated after May 20, 1999, the amount derived by taking \$.50 per share as of May 20, 1998 and compounding by a fifteen percent (15%) annual return for each full annual period thereafter (such that, for example, Corporation need not get such approval if, for a merger to be consummated after May 20, 1999 but on or before May 20, 2000, the price equals or exceeds \$0.575 per share on a fully-diluted basis); or

(iii) Amend its Certificate of Incorporation in a manner that materially adversely affects the Series A Preferred Stock.

c. So long as at least 300,000 shares of Series B Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the

holders of at least a majority of the then outstanding shares of the Series B Preferred Stock, voting together as a single class:

- (i) issue any additional shares of Series B Preferred Stock;
- (ii) effect a merger of the Corporation or a sale of all or substantially all of its assets in which the consideration paid to shareholders does not equal or exceed \$1.67 per share; or
- (iii) Amend its Certificate of Incorporation in a manner that materially adversely affects the Series B Preferred Stock.

d. The Corporation shall not amend its Certificate of Incorporation or Bylaws without the approval, by vote or written consent, by the holders of a majority of a series of Preferred Stock if such amendment would adversely change any of the rights, preferences or privileges provided for herein for the benefit of any shares of that series of Preferred Stock, in a manner different from other series of Preferred Stock.

6. No Reissuance of Series A Preferred Stock and Series B Preferred Stock. No share or shares of Series A Preferred Stock or Series B Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

FIFTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors shall have the power, subject to the provisions of Section C.5 of Article FOURTH, both before and after receipt of any payment for any of the Corporation's capital stock, to adopt, amend, repeal or otherwise alter the Bylaws of the Corporation without any action on the part of the stockholders; provided, however, that the grant of such power to the Board of Directors shall not divest the stockholders of nor limit their power, subject to the provisions of Section C.6 of Article FOURTH, to adopt, amend, repeal or otherwise alter the Bylaws.

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

SEVENTH: The Corporation reserves the right to adopt, repeal, rescind or amend in any respect any provisions contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by applicable law, and all rights conferred on stockholders herein are granted subject to this reservation.

EIGHTH: A director of the Corporation shall, to the full extent permitted by the Delaware General Corporation Law as it now exists or as it may hereafter be amended, not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Neither any amendment nor repeal of this Article EIGHTH, nor the adoption of any provision of this Restated Certificate of Incorporation inconsistent with the Article EIGHTH, shall eliminate or reduce the effect of this Article EIGHTH in respect of any matter occurring, or

any cause of action, suit or claim that, but for this Article EIGHTH, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

The undersigned, David Hancock, the President and Chief Executive Officer of the Corporation, hereby acknowledges that the foregoing is the act and deed of the Corporation and the facts stated therein are true.

/s/ David Hancock

David Hancock, President and  
Chief Executive Officer