

12-15-1999

FORM PTO-1618A
Expires 06/30/99
OMB 0651-0027



101222694

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

MRP
11-19-99

**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

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

Submission Type

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

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
- Merger Effective Date
Month Day Year
- Change of Name
- Other

Conveying Party

- Mark if additional names of conveying parties attached
- Name Execution Date
Month Day Year
- Formerly

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

Receiving Party

- Mark if additional names of receiving parties attached

- Name
- DBA/AKA/TA
- Composed of
- Address (line 1)
- Address (line 2)
- Address (line 3)
City State/Country Zip Code
- Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

12/14/1999 TTOM11 00000234 1430474

FOR OFFICE USE ONLY

01 FC:481
02 FC:482

40.00 OP
75.00 OP

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

TRADEMARK
REEL: 001998 FRAME: 0817

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

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

#

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

Mark if additional numbers attached

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

Trademark Application Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Registration Number(s)

<input type="text" value="1,430,474"/>	<input type="text" value="1,430,473"/>	<input type="text" value="1,430,472"/>
<input type="text" value="1,363,666"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

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

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Louis J. Luzynski

Name of Person Signing

Signature

11-10-99

Date Signed

State of Delaware
Office of the Secretary of State PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"FLEETMAN, INC.", A LOUISIANA CORPORATION,

WITH AND INTO "FLEETMAN MERGER CORP." UNDER THE NAME OF "FLEETMAN, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINTH DAY OF FEBRUARY, A.D. 1998, AT 11 O'CLOCK A.M.

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



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

Edward J. Freel, Secretary of State

2854298 8100M

981050259

AUTHENTICATION: 8910062

DATE: 02-09-98

TRADEMARK
REEL: 001998 FRAME: 0819

**CERTIFICATE OF MERGER
 OF
 FLEETMAN, INC.
 WITH AND INTO
 FLEETMAN MERGER CORP.**

The undersigned corporation, acting pursuant to Section 252 of the Delaware General Corporation Law and Louisiana Revised Statute 12:112, hereby certifies as follows:

First: That the name and state of incorporation of each of the constituent corporations is as follows:

<u>Name</u>	<u>State of Incorporation</u>
Fleetman Merger Corp.	Delaware
Fleetman, Inc.	Louisiana

Second: That an Agreement and Plan of Merger between the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the parties in accordance with the requirements of Section 252 of the Delaware General Corporation Law and Louisiana Revised Statute 12:112.

Third: That the Surviving Corporation of the merger is Fleetman Merger Corp. (the "Surviving Corporation"), the name of which, as of the effective time of this merger, is changed to Fleetman, Inc.

Fourth: That the certificate of incorporation of Fleetman Merger Corp. shall be supplemented and amended as fully set out in Attachment "A" hereto, to be effective contemporaneously with the merger. The certificate of incorporation of Fleetman Merger Corp., as so supplemented and amended, shall operate in full force and effect as the charter document of the Surviving Corporation until the same shall be further altered, amended or repealed as provided therein or in accordance with law.

Fifth: That the executed Agreement and Plan of Merger is on file at the office of the Surviving Corporation, located at 3000 34th Street, Metairie, Louisiana 70001.

Sixth: That a copy of the Agreement and Plan of Merger will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of either party to the merger.

Seventh: This Certificate of Merger shall be effective upon its filing with the Secretaries of State of the States of Delaware and Louisiana.

Eighth: The authorized capital stock of the foreign corporation which is a party to the merger is as follows:

<u>Corporation</u>	<u>Class</u>	<u>Number of Shares</u>	<u>Par Value Per Share</u>
Fleetman, Inc.	Common	20,000	\$1.00

Merger Corp.

This Certificate of Merger is executed by Fleetman, Inc., acting through its President on the date indicated below.

**FLEETMAN MERGER CORP., HEREAFTER
FLEETMAN, INC.**

ATTEST: *George Mayer*
Secretary

By: *John J. [Signature]*
President

DATED: February 6, 1998

**Acknowledgment as to
Fleetman Merger Corp.**

State of Louisiana

Parish of Jefferson

BEFORE ME, the undersigned authority, personally came and appeared Louis J. Luzynski who, being duly sworn, declared and acknowledged before me that he is the President of Fleetman Merger Corp. and that in such capacity he was duly authorized to and did execute the foregoing Certificate of Merger on behalf of such corporation, for the purposes therein expressed, as his and such corporation's free act and deed, and that the facts stated therein are true.

Sworn to and subscribed before me
this 6th day of February, 1998.



NOTARY PUBLIC

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ATTACHMENT "A"

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
FLEETMAN MERGER CORP.

Fleetman Merger Corp., a corporation organized and existing under the laws of the state of Delaware, hereby certifies as follows:

1. Pursuant to Section 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates, integrates and further amends the provisions of the original Certificate of Incorporation, as amended to the date of this filing. The original Certificate of Incorporation of this corporation was filed with the Secretary of State of the State of Delaware on February 3, 1998. This Amended and Restated Certificate of Incorporation has been duly adopted by the directors of the corporation with the approval of its stockholders.

2. The text of the original Certificate of Incorporation, as amended to the date of this filing, is hereby restated and amended to read in its entirety as follows:

ONE: The name of the corporation is Fleetman, Inc.

TWO: The address of the corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, in the County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THREE: 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 Delaware.

FOUR: The aggregate number of shares which the corporation shall have authority to issue is 29,000, consisting of:

(i) 20,426 shares of Common Stock, \$0.001 par value per share (the "Common Stock"), and

(ii) 8,574 shares of Series A Convertible Preferred Stock, \$0.001 par value per share (the "Preferred Stock").

A statement of the designations, powers, preferences, rights, qualifications, limitations and restrictions in respect of the shares of the Preferred Stock and Common Stock is as follows:

1. Definitions. For purposes of this Article FOUR, the following terms shall have the following definitions:

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1.1 "Board" shall mean the Board of Directors of the Company.

1.2 "Company" shall mean this corporation.

1.3 "Subsidiary" shall mean any corporation at least fifty percent (50%) of whose outstanding voting stock shall at the time be owned, directly or indirectly, by the Company or by one or more such subsidiaries.

1.4 "Conversion Rights" shall have the meaning set forth in Section 5.

1.5 "Conversion Price" shall mean \$1931.8182, as adjusted herein.

1.6 "Redemption Date" shall have the meaning set forth in Section 7.1.

1.7 "Redemption Notice" shall have the meaning set forth in Section 7.1.

1.8 "Redemption Price" shall have the meaning set forth in Section 7.1.

1.9 "Base Liquidation Preference Amount" shall mean an amount equal to \$1931.8182 for each share of Preferred Stock.

1.10 "Initial Liquidation Preference" with respect to each share of Series A Preferred Stock shall mean the sum of (i) the Base Liquidation Preference Amount and (ii) an amount equal to all accrued but unpaid cumulative dividends thereon to and including the date full payment shall be tendered to the holders of Preferred Stock with respect to the liquidation, dissolution or winding up of the Company.

2. Dividends and Distributions.

2.1 For so long as any shares of Preferred Stock shall be outstanding before any dividends are declared on, or paid to the holders of, the Common Stock, the holders of the outstanding shares of Preferred Stock shall be entitled to receive cumulative preferential dividends at the rate per annum of eight percent (8%) per share, compounded semi-annually, of the Base Liquidation Preference Amount (together with any interest thereon as provided in this Section 2.1, the "Accruing Dividends"), payable semi-annually on the first business day of each January and July (each date being called a "Dividend Payment Date") commencing July 1, 1998, with respect to the semi-annual dividend period (or portion of it) ending on the day preceding the respective Dividend Payment Date. Accruing Dividends on the Preferred Stock shall be cumulative from day to day on each share of Preferred Stock from the date of original issuance of such share whether or not declared and whether or not in any dividend period or dividend periods there will be net profits or net assets of the Company legally available for the payment of those dividends. Accruing Dividends shall bear interest, payable in cash out of funds legally available therefor, from the date the dividend would otherwise have been paid until the date the same will be paid, at the rate per annum of eight percent (8%), compounded semi-annually.

2.2 Unless all unpaid Accruing Dividends shall have been paid or declared and a sum sufficient for the payment thereof set apart: (i) no dividend whatsoever (other than a dividend payable solely in shares of Common Stock) shall be paid or declared, and no distribution shall be made, on the Common Stock, and (ii) no shares of Common Stock or Preferred Stock shall be purchased, redeemed or acquired by the Company and no monies shall be paid into or set aside, or made available for a sinking fund, for the purchase, redemption or acquisition thereof except the redemption of the Preferred Stock as set forth herein; provided, however, that this restriction shall not apply to the redemption of shares of Preferred Stock in accordance with Section 7.1: provided,

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further, however, that this restriction shall not apply to the repurchase of shares of Common Stock from directors, officers, employees or consultants of the Company or of any Subsidiary pursuant to agreements under which the Company has the option, but not the obligation, to repurchase such shares upon the occurrence of certain events, including the termination of employment, if the Board approves such repurchase.

2.3 The holders of the outstanding shares of Common Stock provided the conditions in Section 2.2 hereof are satisfied, shall be entitled to dividends when, as and if declared by the Board, out of any funds legally available therefor.

3. Liquidation.

3.1 In the event of any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock, the holder of each share of Preferred Stock then outstanding shall be entitled to be paid, out of the assets of the Company available for distribution to its stockholders, whether such assets are capital, surplus or earnings, an amount equal to the greater of (i) the Base Liquidation Preference Amount plus, in the case of each share, an amount equal to all Accruing Dividends unpaid thereon (whether or not declared) and any other dividends declared but unpaid thereon, computed to the date payment thereof is made available, or (ii) such amount per share as would have been payable had each such share been converted to Common Stock pursuant to Section 5 immediately prior to such liquidation, dissolution or winding up, and the holders of Preferred Stock shall not be entitled to any further payment. If the assets to be distributed to the holders of the Preferred Stock upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, shall be insufficient to permit the payment to such stockholders of the full preferential amounts as set forth above, then all of the assets of the Company to be distributed shall be distributed ratably among the holders of the Preferred Stock pro rata in proportion to the Initial Liquidation Preference to which the holders of such shares of Preferred Stock are then entitled.

3.2 After the payment or distribution to the holders of the Preferred Stock of the full amounts as set forth in Section 3.1, the holders of the Common Stock shall be entitled pro rata, based on the number of shares outstanding, to all the remaining assets of the Company.

3.3 Solely for purposes of this Section 3, a sale of all or substantially all of the assets of the Company, or a merger or consolidation of the Company with or into any other corporation (other than a merger or consolidation in which shares of the Company's voting capital stock outstanding immediately before such merger or consolidation are exchanged or converted into or constitute shares which represent more than fifty percent (50%) of the surviving entity's voting capital stock after such consolidation or merger), or a transaction or series of related transactions in which a person or group of persons (as defined in Rule 13d-5(b)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) acquires beneficial ownership (as determined in accordance with Rule 13d-3 of the Exchange Act) of more than 50% of the voting power of the Company, shall be deemed to be a liquidation, dissolution, or winding up of the Company, unless a majority of the outstanding shares of Preferred Stock, voting as single, separate class, consent to treat such merger, consolidation or acquisition of beneficial ownership otherwise.

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4. Directors and Voting Rights.

4.1 Election of Directors. (i) The holders of Preferred Stock, voting as a single, separate series, shall be entitled to elect four (4) directors. (ii) the holders of Common Stock, voting as a single, separate class, shall be entitled to elect two (2) directors, (iii) the holders of 80% of the then outstanding shares of Preferred Stock and Common Stock, voting together as a single class, shall be entitled to elect one (1) director, and (iv) the holders of the Preferred Stock and Common Stock, voting together as a single class, shall be entitled to elect any remaining directors.

4.2 General Voting Rights. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and Common Stock shall be entitled to vote on all matters submitted to a vote of stockholders of the Company. Each share of Common Stock shall be entitled to one vote and each share of Preferred Stock shall be entitled to that number of votes equal to the largest number of whole shares of Common Stock into which such share of Preferred Stock may be converted as of the close of business on the record date fixed for any meeting of the stockholders of the Company or the effective date of any written consent of the stockholders of the Company (with any fractional share determined on an aggregate basis for each holder being rounded up to the next whole share). Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and Common Stock shall vote together as a single class and not as separate classes.

4.3 Vacancies. In the case of any vacancy in the office of a director elected by the holders of any of the Company's capital stock voting as a single, separate class or series pursuant to Section 4.1 hereof, then either (A) the holders of such class or series may elect a successor or successors to hold office for the unexpired term of the director or directors whose office or offices shall be vacant or (B) the remaining directors, if any, so elected by that separate class or series may, by affirmative vote of a majority thereof (or the remaining director so elected if there be but one (1)), may elect a successor or successors to hold office for the unexpired term of the director or directors whose office or offices shall be vacant. Any director who shall have been elected by the holders of any of the Company's capital stock voting as a single, separate class of stock, or by any directors so elected as provided in the next preceding sentence hereof, may be removed during the aforesaid term of office, either for or without cause, by, and only by, the vote of the holders of the shares of the class who elected such director or directors taken at a meeting of such stockholders duly called for that purpose, and any vacancy thereby created may be filled by the holders of the shares of such class.

5. Conversion. The holders of Preferred Stock shall have the following conversion rights (the "Conversion Rights"):

5.1 Right to Convert Preferred Stock. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, into that number of fully paid and non-assessable shares of Common Stock (or other securities or property pursuant to Sections 5.6 or 5.7 below) which shall result from dividing the Conversion Price for the Preferred Stock in effect at the time of conversion into \$1,931.8182.

5.2 Automatic Conversion.

5.2.1 Each share of Preferred Stock shall automatically be converted into that number of fully paid and non-assessable shares of Common Stock (or other securities or property pursuant to Sections 5.6 or 5.7 below) which shall result from dividing the Conversion Price then in effect (after giving effect to the adjustment, if any, to the Conversion Price pursuant to Section 5.11) into \$1,931.8182 immediately upon the closing of a firmly underwritten offering of Common Stock pursuant to a registration statement under the Securities Act, or any

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successor statute, with gross proceeds to the Company (before underwriting discounts and commissions and offering expenses) of Twenty Million Dollars (\$20,000,000) or more and which has a per share price to the public of not less than three times the Base Liquidation Preference Amount (such per share price appropriately adjusted for stock splits, stock dividends and share combinations affecting the number of outstanding shares of Common Stock after the effective date of this Amended and Restated Certificate of Incorporation of the Company), or such lesser amount, of (A) gross proceeds to the Company, (B) price per share to the public or (C) both, to which a majority of the then outstanding shares of Preferred Stock consents.

5.2.2 Upon the occurrence of any event specified in Section 5.2.1, the outstanding shares of Preferred Stock shall be converted automatically, without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of occurrence of the event causing automatic conversion 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 at such time on such date, unless the transfer books of the Company are closed on such date, in which event such person shall be deemed to have become a stockholder of record on the next succeeding date on which the transfer books are open, but the Conversion Price shall be that in effect on such prior time and date.

5.2.3 Upon the automatic conversion of the Preferred Stock, the holders of Preferred Stock shall surrender the certificates representing such shares, duly endorsed, at the office of the Company or of any transfer agent for the Common Stock or Preferred Stock or shall notify the Company or transfer agent that such certificates have been lost, stolen or destroyed and shall execute an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. Thereupon, the Company shall promptly issue and deliver at such office to such holder of Preferred Stock new certificates for the number of shares of Common Stock to which such holder is entitled.

5.3 Mechanics of Voluntary Conversion.

5.3.1 Before any holder of shares of Preferred Stock shall be entitled voluntarily to convert the same into shares of Common Stock, such holder shall surrender the certificates representing such shares, duly endorsed, at the office of the Company or of any transfer agent for the Common Stock or Preferred Stock, or shall notify the Company or transfer agent that such certificates have been lost, stolen or destroyed and shall execute an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith, and shall give written notice to the Company at such office that such holder elects to convert the same, stating therein the series and number of shares of Preferred Stock being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder of Preferred Stock new certificates for the number of shares of Common Stock to which such holder shall be entitled.

5.3.2 Any voluntary conversion of shares of Preferred Stock shall be deemed to have been made immediately prior to the close of business on the date of such surrender of such shares to be converted, or delivery of the above-described notification and indemnity, 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 at such time on such date, unless the transfer books of the Company are closed on such date, in which event such person or persons shall be deemed to have become a stockholder or stockholders of record on the next succeeding date on which the transfer books are open, but the Conversion Price shall be that in

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effect on such prior time and date. Upon conversion of only a portion of the number of shares of Preferred Stock represented by a certificate surrendered for conversion, the Company shall issue and deliver to the holder of the certificate so surrendered for conversion, at the expense of the Company, a new certificate covering the number of shares of Preferred Stock representing the unconverted portion of the certificate so surrendered.

5.4 Dividend Payment Upon Conversion. Upon any conversion of shares of Preferred Stock into shares of Common Stock, the Company shall pay all unpaid Accruing Dividends on the shares of Preferred Stock being converted; provided, however, that if the Company shall be prohibited by law from making all such payments in cash, the Company shall, in lieu of making a full cash payment of all such unpaid Accruing Dividends, make payment thereof in cash to the extent permitted by law and shall pay the balance in whole shares of Common Stock, at the then current fair market value of the Common Stock, plus cash in lieu of any fractional share.

5.5 Adjustment for Stock Splits and Combinations. If the Company shall at any time effect a subdivision of the outstanding shares of Common Stock (or other securities into which the Preferred Stock may be converted) by way of stock split, stock dividend or otherwise, then, and in each such case, the Conversion Price as in effect immediately before such subdivision shall be proportionately decreased and, conversely, if the Company shall at any time combine the outstanding shares of Common Stock (or other securities into which the Preferred Stock may be converted) by way of reverse stock split or otherwise, then, and in each such case, the Conversion Price as in effect immediately before such combination shall be proportionately increased.

5.6 Adjustment for Reclassification, Exchange and Substitution. If the Common Stock (or other securities into which the Preferred Stock may be converted) shall at any time be reclassified or otherwise changed, whether by reorganization, reclassification or otherwise (other than by a merger, consolidation or sale of assets described in Section 5.7), then, and in each such event, each share of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock and other securities or property which the holder of that number of shares of Common Stock (or other securities) into which such share of Preferred Stock shall be convertible immediately prior to such event would be entitled to receive upon the occurrence of such event.

5.7 Merger, Consolidation and Sale of Assets. If the Company shall at any time merge or consolidate with or into another corporation (other than where the Company is the surviving corporation and there is no reclassification or change in the Common Stock or other securities into which the Preferred Stock may be converted) or shall sell all or substantially all of its properties and assets to any other person, then, as a part of such merger, consolidation or sale, provision shall be made to assure that each holder of Preferred Stock shall thereafter be entitled to receive, upon conversion of the Preferred Stock, the kind and amount of shares of stock and other securities or property of the Company, or of the successor corporation resulting from such merger, consolidation or sale, that the holder of that number of shares of Common Stock (or other securities) into which the Preferred Stock held by such holder shall be convertible immediately prior to such merger, consolidation or sale would be entitled to receive on such merger, consolidation or sale. In every such case, appropriate adjustment shall be made in application of the provisions of this Section 5 with respect to the rights of the holders of Preferred Stock after the merger, consolidation or sale to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and the kind and amount of shares or other property into which the Preferred Stock may be converted) shall be applicable after that event, as nearly equivalent as may be practicable.

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5.8 Adjustments of Conversion Price Upon Dilutive Issuances.

5.8.1 Except as provided in Section 5.8.2, if and whenever the Company shall issue or sell, or is, in accordance with this Section 5.8.1.1 through Section 5.8.1.6, deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Conversion Price shall be reduced to the price at which the Company issued or sold, or is deemed to have issued or sold, such shares of Common Stock.

For purposes of this Section 5.8.1, the following subsections 5.8.1.1 to 5.8.1.6 shall also be applicable:

5.8.1.1 Issuance of Rights or Options. In case at any time the Company shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in Section 5.8.1.3, no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

5.8.1.2 Issuance of Convertible Securities. In case the Company shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in Section 5.8.1.3, no adjustment of the

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Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price have been or are to be made pursuant to other provisions of this Section 5.8.1, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

5.8.1.3 Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in Section 5.8.1.1, the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section 5.8.1.1 or 5.8.1.2, or the rate at which Convertible Securities referred to in Section 5.8.1.1 or 5.8.1.2 are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Price in effect at the time of such event shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold, but only if as a result of such adjustment the Conversion Price then in effect hereunder is thereby reduced; and on the termination of any such Option or any such right to convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

5.8.1.4 Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Company therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Company in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Company, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Company in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Company.

5.8.1.5 Record Date. In case the Company shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

5.8.1.6 Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this Section 5.8.1.

5.8.2 Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Company shall not be required to make any adjustment of the Conversion Price in the case of the issuance from and after the date of filing of this Amended and Restated Certificate of Incorporation (i) of options or other rights to

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purchase to directors, officers, employees or consultants of the Company of up to an aggregate of 666 shares (appropriately adjusted to reflect the occurrence of any event described in Section 5.5) of Common Stock pursuant to an established incentive or non-qualified stock option plan and in connection with their service as directors of the Company, their employment by the Company or their retention as consultants by the Company, plus such number of shares of Common Stock which are repurchased by the Company from such persons after such date pursuant to contractual rights held by the Company and at repurchase prices not exceeding the respective original purchase prices paid by such persons to the Company therefor, and (ii) which was not authorized by a majority of directors that included a majority of the directors elected by the holders of Common Stock either (A) voting as a single, separate class or (B) voting together with the then outstanding shares of Preferred Stock as a single class.

5.9 Other Action Affecting Common Stock. If the Company takes any action affecting its Common Stock after the date hereof, other than an action described in any of Sections 5.1 through 5.8 hereof, inclusive, which would have a materially adverse effect upon the rights of any Preferred Stock hereunder, the Conversion Price shall be adjusted downward in such manner and at such time as the Board may in good faith determine to be equitable under the circumstances.

5.10 Failure to Redeem. If, on any Redemption Date, all shares of Preferred Stock required to be redeemed in accordance with Section 7.1 are not redeemed, the Conversion Price shall automatically be decreased at a rate per annum of 15% from day to day commencing on such Redemption Date. The Conversion Price shall be decreased as provided in this Section 5.10 until the Company has satisfied in full its obligations under Section 7.1.

5.11 Defaults. If the Company has breached any covenant or agreement set forth in the Series A Convertible Preferred Stock and Common Stock Purchase Agreement dated as of February 9, 1998 among the Company, Wm. B. Reilly & Co., Inc. and the several purchasers names in Schedule I thereto or the Stockholders Agreement dated as of February 9, 1998 among the Company and its stockholders, each as amended from time to time, and such breach has not been cured within 45 days after notice of such breach is given to the Company, the Conversion Price shall automatically be decreased at a rate per annum of 15% from day to day commencing on the date of such notice. The Conversion Price shall be decreased as provided in this Section 5.11 until the Company has cured such breach and has notified the holders of Preferred Stock of such cure.

5.12 Time of Adjustments to Conversion Price.

5.12.1 All adjustments to the Conversion Price, unless otherwise specified herein, shall be effective as of the earlier of:

5.12.1.1 the date of issue of the security causing the adjustment;

5.12.1.2 the date of sale of the security causing the adjustment;

5.12.1.3 the effective date of a division or combination of shares; or

5.12.1.4 the record date of any action of holders of the Company's capital stock of any class taken for the purpose of dividing or combining shares or entitling stockholders to receive a distribution or dividends payable in Common Stock, Options or Convertible Securities.

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5.13 Notice of Adjustments. In each case of an adjustment of the Conversion Price, the Company, at its expense, shall cause the chief financial officer of the Company to compute such adjustment and prepare a certificate setting forth such adjustment and showing in detail the facts upon which such adjustment is based, including a statement of (a) the consideration received or to be received by the Company, if any, for any additional shares of Common Stock, Options or Convertible Securities issued or sold or deemed to have been issued or sold, (b) the number of shares of Common Stock outstanding or deemed to be outstanding, and (c) the adjusted Conversion Price. The Company shall promptly mail a copy of each such certificate to each holder of Preferred Stock affected by such adjustment.

5.14 Duration of Adjusted Conversion Price. Following each adjustment of the Conversion Price, such adjusted Conversion Price shall remain in effect until a further adjustment of such Conversion Price hereunder except as otherwise provided in Sections 5.10 and 5.11.

5.15 Minimum Adjustment. No adjustment of the Conversion Price shall be made in an amount less than One Cent (\$.01) (subject to appropriate adjustments for stock splits and stock dividends, and provided that at such time as events causing adjustments accumulating One Cent (\$.01) or more have occurred, adjustments to Conversion Price shall be made), and no adjustment of a Conversion Price shall have the effect of increasing a Conversion Price above such Conversion Price in effect immediately prior to such adjustment (except for the upward adjustments provided in Sections 5.7 and 5.8.1.3).

5.16 Notices of Record Date. In the event of any reclassification of or other change in the capital stock of the Company or any merger or consolidation of the Company, transfer of all or substantially all of the assets of the Company to any other person or voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Preferred Stock, at least thirty (30) days prior to the record date of such event, a notice specifying the date on which such event is expected to become effective and the time, if any, that is to be fixed as to when the holders of record of shares of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such event.

5.17 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of shares of Preferred Stock. The number of shares of Common Stock to which a holder of shares of Preferred Stock shall be entitled shall be based on the aggregate number of shares of Preferred Stock then being converted by such holder. In lieu of any fractional share to which such holder would otherwise be entitled, the Company shall pay cash equal to the fair market value of such fraction based on the fair market value of one (1) share of Common Stock on the date of conversion, as determined in good faith by the Board.

5.18 Reservation of Stock. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock (or other securities into which the Preferred Stock may be converted), solely for the purpose of effecting the conversion of the Preferred Stock, such number of its shares of Common Stock (or other securities) as shall, from time to time, be sufficient to effect the conversion of (i) all outstanding shares of Preferred Stock and (ii) all shares of Preferred Stock issuable under outstanding warrants, options or similar rights. If at any time the number of authorized but unissued shares of Common Stock (or other securities) shall not be sufficient to effect the conversion of all the Preferred Stock then outstanding, the Company 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 (or other securities) to such number of shares as shall be sufficient for such purpose. If any shares of Common Stock reserved for the purpose of conversion of shares of Preferred Stock require registration, qualification or listing with, or approval of, any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise before such shares may be validly

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issued or delivered upon conversion, the Company will, in good faith, at its own expense and as expeditiously as possible, endeavor to secure such registration, qualification, approval or listing, as the case may be.

5.19 Notices. Any notice required by the provisions of this Section 5 to be given to a holder of Preferred Stock shall be deemed given five (5) business days after the same has been deposited in the U.S. mail, certified or registered, return receipt requested, postage prepaid and addressed to each holder of record at such holder's address appearing on the stock record books of the Company.

5.20 Payment of Taxes. The Company will pay all taxes and other governmental charges (other than taxes based on income) that may be imposed in respect of the issue or delivery of shares of Common Stock (or other securities or property) upon conversion of Preferred Stock. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

5.21 No Dilution or Impairment. The Company shall not amend its Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times, in good faith, assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of holders of Preferred Stock against impairment.

5.22 Status of Converted Stock. In case any shares of Preferred Stock shall be converted pursuant hereto, the shares so converted shall be canceled and the authorized number of shares of Preferred Stock shall be reduced accordingly.

6. Restrictions and Limitations. At any time when shares of Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Company is required by law or by this Amended and Restated Certificate of Incorporation, and in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation, without the approval of the holders of at least two-thirds of the then outstanding shares of Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, the Company will not:

6.1 Create or authorize the creation of any additional class or series of shares of stock unless the same ranks junior to the Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Company, or increase the authorized amount of the Preferred Stock or increase the authorized amount of any additional class or series of shares of stock unless the same ranks junior to the Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Company, or create or authorize any obligation or security convertible into shares of Preferred Stock or into shares of any other class or series of stock unless the same ranks junior to the Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Company, whether any such creation, authorization or increase shall be by means of amendment to this Amended and Restated Certificate of Incorporation or by merger, consolidation or otherwise;

6.2 Consent to any liquidation, dissolution or winding up of the Company or consolidate or merge

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into or with any other entity or entities or sell, lease, abandon, transfer or otherwise dispose of all or substantially all its assets;

6.3 Amend, alter or repeal its Amended and Restated Certificate of Incorporation or By-laws in such a way as to adversely affect the right of the Preferred Stock;

6.4 Purchase or set aside any sums for the purchase of, or pay any dividend or make any distribution on, any shares of stock other than the Preferred Stock, except for dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and except for the purchase of shares of Common Stock from former employees of the Company who acquired such shares directly from the Company, if each such purchase is made pursuant to contractual rights held by the Company relating to the termination of employment of such former employee and the purchase price does not exceed the original issue price paid by such former employee to the Company for such shares; or

6.5 Redeem or otherwise acquire any shares of Preferred Stock except as expressly authorized in Section 7 hereof or pursuant to a purchase offer made pro rata to all holders of the shares of Preferred Stock on the basis of the aggregate number of outstanding shares of Preferred Stock then held by each such holder.

7. Redemption of Preferred Stock

7.1 Mandatory Redemption. Unless otherwise requested by the holders of a majority of the Preferred Stock then outstanding and unanimously approved by the directors, the Company shall redeem the "Specified Number" (as hereinafter defined) of shares of Preferred Stock then outstanding on (i) the fifth anniversary of the date of filing of this Amended and Restated Certificate of Incorporation (the "First Redemption Date"), (ii) the sixth anniversary of the date of filing of this Amended and Restated Certificate of Incorporation (the "Second Redemption Date"), and (iii) the seventh anniversary of the date of filing of this Amended and Restated Certificate of Incorporation (the "Third Redemption Date"), in accordance with the provisions set forth below (the above redemption dates are referred to individually as "Redemption Date"); provided, however, that the Company shall have the right, but not the obligation, to redeem on the Second Redemption Date all shares of Preferred Stock then outstanding if approved by a majority of its Board of Directors that includes all of the directors elected by the holders of Common Stock, voting as a single, separate class. On the applicable Redemption Date, the Company shall redeem from each holder of Preferred Stock the Specified Number of shares of Preferred Stock held by such holder at a price per share equal to the Base Liquidation Amount (as adjusted for stock splits, stock combinations, stock dividends, and recapitalizations affecting the Preferred Stock) plus the unpaid Accruing Dividends (whether or not declared) (the "Redemption Price").

With respect to any holder of Preferred Stock, the "Specified Number" shall be with respect to (i) the First Redemption Date, one-third of the number of shares of Preferred Stock such holder holds on such date not previously called for redemption (or, if it is not a whole number, the whole number nearest below); (ii) the Second Redemption Date, one-half of the number of shares of Preferred Stock then held by such holder and not previously called for redemption (or, if it is not a whole number, the whole number nearest below); and (iii) the Third Redemption Date, all of the shares of Preferred Stock then held by such holder.

Not later than thirty (30) days prior to the applicable Redemption Date, the Company shall mail, postage prepaid to each holder of record of Preferred Stock at its address shown on the records of the Company a redemption notice (the "Redemption Notice"), which shall set forth the Redemption Date, the Redemption Price and that the holder is to surrender to the Company, at the place designated therein, its certificate or certificates representing the specified number of shares of Preferred Stock to be redeemed. Three (3) days prior to each

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Redemption Date, the Company shall deposit the applicable Redemption Price of all outstanding shares of Preferred Stock to be redeemed on such date with a bank or trust company having aggregate capital and surplus in excess of One Billion Dollars (\$1,000,000,000) as a trust fund for the benefit of the respective holders of the shares to be redeemed. Simultaneously, the Company shall deposit irrevocable instructions and authority to such bank or trust company to pay, on and after the date fixed for redemption or prior thereto, the applicable Redemption Price of the Preferred Stock to the holders thereof upon surrender of their certificates. Any monies deposited by the Company pursuant to this Section 7.1 remaining unclaimed upon the expiration of three (3) years following the Redemption Date shall thereafter be returned to the Company, provided that the stockholder to whom such monies would be payable shall be entitled, upon proof of his ownership of the Preferred Stock and surrender of certificates therefor, to receive such monies but without interest from the Redemption Date. The Redemption Price shall be paid, in a lump sum payment to each holder of Preferred Stock, on the applicable Redemption Date.

If, on the applicable Redemption Date, sufficient funds are not legally available to redeem all shares required to be redeemed, then (i) the funds legally available shall be used to redeem the maximum possible number of shares ratably among the holders, and the remaining shares shall be redeemed as soon as possible after funds become legally available and (ii) notwithstanding the provisions of Section 4 hereof, the holders of a majority of the shares of the Preferred Stock shall be entitled to (A) increase the number of directors constituting the Board by the greater of (x) two and (y) that number that would then entitle the holders of Preferred Stock voting as a single, separate series to elect more than 50% of the members of the Board, (B) designate and elect additional directors (the "Additional Directors") to fill the vacancies created by such expansion and (C) the Conversion Price shall be reduced as provided in Section 5.10. The Additional Directors shall serve in such capacity until the Company has satisfied in full its obligations under this Section 7. Notwithstanding the foregoing, each holder of Preferred Stock will also have any other rights which such holder may have been afforded under any contract or agreement with the Company at any time and any other rights which such holder may have pursuant to applicable law. The Company shall give the holders of the Preferred Stock at least 10 days' notice of any redemption payment to be made after the relevant Redemption Date.

7.2 Mechanics of Redemption. Each holder of shares of Preferred Stock to be redeemed shall surrender its certificate or certificates representing such shares, duly endorsed in blank or accompanied by a duly endorsed stock power attached thereto, to the Company at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares as set forth in this Section 7 shall be paid to the order of the person whose name appears on such certificate or certificates and each surrendered certificate shall be canceled and retired. If any shares of Preferred Stock are not redeemed solely because a holder fails to surrender the certificate or certificates representing such shares pursuant to this Section 7, then, from and after the applicable Redemption Date, and except for the continuing right to receive payment under this Section 7 (which shall not bear interest), such shares of Preferred Stock thereupon subject to redemption shall not be entitled to any further rights as Preferred Stock.

8. Construction. A reference in this Article FOUR to any Section shall mean a section of this Article FOUR and shall include a reference to every Section the number of which begins with the number of the Section to which reference is specifically made (e.g., a reference to Section 5.2 shall include a reference to Sections 5.2.1 and 5.2.2).

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9. Common Stock.

9.1 All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Common Stock are expressly made subject and subordinate to those that may be fixed with respect to any shares of Preferred Stock.

9.2 Except as otherwise expressly provided herein or required by law, each holder of Common Stock shall have one vote in respect of each share of stock held by him of record on the books of the Company for the election of directors and on all matters submitted to a vote of stockholders of the Company. Notwithstanding the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of a majority of the Common Stock and Preferred Stock, voting together as a single class.

FIVE: The Board of Directors of the Company is expressly authorized to make, alter or repeal By-laws of the Company, but the stockholders may make additional bylaws and may alter or repeal any bylaw whether adopted by them or otherwise.

SIX: Elections of directors need not be by written ballot except and to the extent provided in the By-laws of the Company.

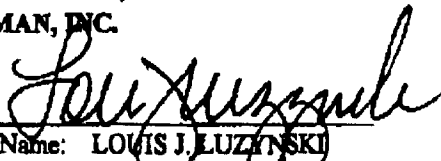
SEVEN: Pursuant to Section 102(b)(7) of the Delaware General Corporation Law, the Company hereby eliminates the personal liability of a director to the Company and its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this Article SEVEN does not eliminate or limit the liability of a director (i) for any breach of such director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. This Article SEVEN shall not eliminate the liability of a director for any act or omission prior to the date upon which this Article SEVEN becomes effective. No amendment to or repeal of this Article SEVEN shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any act or omission of such director prior to such amendment or repeal.

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IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been signed under the seal of the Company this 9th day of February, 1998.

FLEETMAN MERGER CORP., HEREAFTER
FLEETMAN, INC.

By:


Name: LOUIS J. LUZYNSKI
Title: President

[SEAL]