

RESTATED CERTIFICATE OF INCORPORATION

OF

MONRO MUFFLER BRAKE, INC.

Under Section 807 of the Business Corporation Law

The undersigned, being the President and Secretary of Monro Muffler Brake, Inc. (the "Corporation"), pursuant to Section 807 of the Business Corporation Law of the State of New York (the "BCL"), do hereby certify as follows:

FIRST: The name of the Corporation is Monro Muffler Brake, Inc. The name under which the Corporation was formed was Midas Service Corporation, Inc.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State on October 5, 1959.

THIRD: The Certificate of Incorporation of the Corporation, as amended heretofore, is hereby further amended to effect the following amendments authorized by the BCL: (i) Article FIRST is renumbered to Section 1; (ii) Article SECOND is renumbered to Section 2; (iii) Article THIRD is renumbered to Section 4, and is amended to increase the aggregate authorized shares by 18,175,000 to 20,000,000 shares, consisting of 13,425,000 additional shares of Common Stock and 4,750,000 new shares of Serial Preferred Stock; (iv) Articles THIRD (a) and (b) are renumbered to Sections 4(b) and (c), respectively; (v) Article THIRD (c) is renumbered to Section 4(d), and is amended to eliminate the dividend preference, adjust the conversion ratio, and restrict the transferability of the Class C Preferred Stock; (vi) Article THIRD (d) is renumbered to Section 4(a); (vii) Article FOURTH is renumbered to Section 3; (viii) Article FIFTH is renumbered to Section 5; (ix) Article SIXTH is renumbered to Section 10; (x) a new Section 4(e) is added to authorize the issuance of Serial Preferred Stock by the Board of Directors; (xi) a new Section 6 is added to provide that the Board of Directors be classified, have certain additional powers, and be given advance notice of shareholder nominations and proposals; and that all shareholder actions effected at a duly called meeting may be effected by a unanimous written consent; (xii) a new Section 7 is added to limit the personal liability of directors to the fullest extent permitted by the BCL; (xiii) a new Section 8 is added to prohibit the Corporation from repurchasing shares of Common Stock under certain circumstances; and (xiv) a new Section 9 is added to require, subject to the rights of any other class of stock of the Corporation entitled to vote thereon, the approval of holders of two-thirds of the outstanding shares of Common Stock to amend certain provisions of the Certificate of Incorporation.

FOURTH: The text of the Certificate of Incorporation of the Corporation is hereby restated and amended to read as set forth in full below.

"1. The name of the Corporation is Monro Muffler Brake, Inc.

2. The purpose for which the Corporation is formed is to engage in any lawful act or activity for which corporations may be organized under the BCL; provided,

however, that the Corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without first obtaining the consent of such body.

3. The office of the Corporation shall be located in the County of Monroe.

4. The aggregate number of shares which the Corporation shall have the authority to issue is 20,000,000 shares, consisting of:

- (1) 15,000,000 shares of Common Stock, \$.01 par value per share (the "Common Stock");
- (2) 70,000 shares of Class A Senior Cumulative Preferred Stock, \$10.00 par value per share (the "Class A Preferred Stock");
- (3) 30,000 shares of Class B Junior Cumulative Preferred Stock, \$10.00 par value per share (the "Class B Preferred Stock");
- (4) 150,000 shares of Class C Convertible Preferred Stock, \$1.50 par value per share (the "Class C Preferred Stock"); and
- (5) 4,750,000 shares of serial preferred stock, \$.01 par value per share (the "Serial Preferred Stock").

The relative rights, preferences and limitations of the Common Stock; the Class A Preferred Stock, the Class B Preferred Stock, and the Class C Preferred Stock (collectively, the "Preferred Stock"); and the Serial Preferred Stock are as follows:

(a) Common Stock

- (i) Voting. Each holder of shares of Common Stock shall have one vote for each share of such stock held by him in respect of any matter to be voted on by the shareholders of the Corporation.
- (ii) Dividends. After all preferential dividends shall have been paid or declared and set apart for payment on all classes of stock entitled thereto, each holder of shares of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors; provided, however, that no dividends shall be declared, paid or set apart for payment upon the Common Stock unless there shall likewise be declared and set apart for payment upon the outstanding shares of Class C Preferred Stock the dividends provided in Section 4(d)(ii) hereof.
- (iii) Distributions of Assets upon Liquidation, Dissolution or Winding Up. After distribution in full of the preferential amounts to be distributed to the holders of all classes of stock entitled thereto in the event of a voluntary or involuntary liquidation, dissolution or

winding up of the affairs of the Corporation, the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation.

(b) Class A Senior Cumulative Preferred Stock

- (i) Voting Rights. Except as otherwise provided herein and by law, no holder of record of shares of the Class A Preferred Stock shall have any voting rights. The holders of the Class A Preferred Stock, voting separately as a class, shall be entitled to elect, at any annual (one vote per share) meeting of shareholders or any special meeting held in place thereof, one director. Without the consent of the holders of at least two-thirds of the shares of the Class A Preferred Stock at the time outstanding, given in person or by proxy, either in writing or at a special meeting called for that purpose at which the holders of the Class A Preferred Stock shall vote separately as a class (one vote per share), the Corporation may not effect or validate:
- (A) the creation or authorization of any additional class of stock ranking senior to or on a parity with the Class A Preferred Stock in any respect; or any increase in the authorized number of shares of the Class A Preferred Stock or of any other class of preferred stock ranking senior to or on a parity with the Class A Preferred Stock in any respect; or the creation or authorization of any obligation or security convertible into shares of preferred stock of any class ranking senior to or on a parity with the Class A Preferred Stock in any respect, whether any such creation or authorization or increase shall be by means of amendment of the Certificate of Incorporation of the Corporation, merger, consolidation or otherwise;
 - (B) the sale of all or substantially all of the assets of the Corporation or the merger or consolidation of the Corporation with or into any other corporation, otherwise than in the ordinary course of business.
- (ii) Dividends. The holders of record of shares of the Class A Preferred Stock shall be entitled to receive, out of any funds at the time legally available for the declaration of dividends, cumulative cash dividends at the rate of \$.90 per annum per share, payable quarterly on the last day of March, June, September and December of each year, beginning September 30, 1984. If the funds legally available for the payment of dividends shall be insufficient to pay in full the preferential dividends upon the Class A Preferred Stock, such dividends shall be paid ratably. Dividends on each share of

the Class A Preferred Stock shall accrue from and including the date of issue thereof. Arrears of dividends on the Class A Preferred Stock shall not bear interest. So long as any shares of the Class A Preferred Stock are outstanding, the Corporation shall not declare or pay any dividends on the Class B and the Class C Preferred Stock and the Common Stock (other than dividends payable in shares of any class junior to the Class A Preferred Stock) or make, directly or indirectly, any other distribution of any kind in respect of the Class B or the Class C Preferred Stock or Common Stock, or make any payment on account of the redemption, purchase or other acquisition of the Class B or the Class C Preferred Stock or the Common Stock, unless on the date of such declaration, in the case of a dividend, or on the date of such distribution or payment, in the case of a distribution or other payment, all dividends on the Class A Preferred Stock for all past dividend periods shall have been paid in full and the full amount of the then current annual dividend shall have been paid or declared and a sum sufficient for the payment thereof set apart.

- (iii) Distributions of Assets Upon Liquidation, Dissolution or Winding Up. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, each holder of the Class A Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to its shareholders, before any amount shall be paid out of such assets to the holders of the Class B and the Class C Preferred Stock and the Common Stock, \$10.00 per share, plus an amount equal to all cumulative dividends in arrears and the proportional part of any dividend accrued since the immediately preceding date for the payment of dividends to the date fixed for payment of such aggregate amount, but without interest, and the holders of the Class A Preferred Stock shall not be entitled to any other participation in or distribution from any remaining assets of the Corporation; provided, however, that if upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay in full the preferential amounts payable on the Class A Preferred Stock, then such assets shall be distributed among the holders of the Class A Preferred Stock ratably. Neither the consolidation or merger of the Corporation with any other corporation nor the sale or lease of all or substantially all of the assets of the Corporation shall be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this paragraph.

(iv) Redemption.

- (A) Optional Redemption. The Class A Preferred Stock may be redeemed in whole at any time or in part from time to time, in such amounts and in such manner as may be determined by the Board of Directors in its sole discretion. The redemption price for the Class A Preferred Stock shall be \$10.00 per share, plus an amount equal to all cumulative dividends in arrears on such stock and the proportional part of the dividend accrued since the immediately preceding date for the payment of dividends to the date fixed for redemption, but without interest (the "Per Share Redemption Price").
- (B) Mandatory Redemption. Unless such redemption would violate the terms of the loan agreement, dated as of June 1, 1984, by and between the Corporation, as successor to Full Circle Merger, Inc., and Chemical Bank, the Corporation shall redeem from the holder or holders of the outstanding shares of the Class A Preferred Stock, pro rata if there is more than one holder: (1) on January 1, April 1, July 1 and October 1 of each year commencing October 1, 1988 to and including October 1, 1991, 4,500 shares; and (2) on January 1, 1992, 11,500 shares, at the Per Share Redemption Price; provided, however, that if on any such redemption date the amount determined by multiplying the Per Share Redemption Price by the number of shares of the Class A Preferred Stock then to be redeemed, shall exceed the amount of the funds of the Corporation legally available for such redemption, the Corporation shall be obligated to redeem only that number of shares of the Class A Preferred Stock the aggregate redemption price of which does not exceed the amount of such funds. The number of shares of the Class A Preferred Stock not redeemed by reason of the foregoing limitation shall be added to the number of shares of the Class A Preferred Stock to be redeemed on the next succeeding redemption date, until all of the outstanding shares of Class A Preferred Stock have been redeemed. At its option, the Corporation may receive credit against the number of shares to be redeemed on any redemption date for any shares of the Class A Preferred Stock voluntarily redeemed by it pursuant to subparagraph (A) of this paragraph (iv) or otherwise voluntarily purchased by it, and not previously so credited.

Notice of the redemption of all or any part of the Class A Preferred Stock shall be given by mail to each holder of the

Class A Preferred Stock not less than 15 nor more than 45 days prior to the date specified therein for such redemption at the address of such holder as it appears on the stock transfer books of the Corporation. Such notice shall state that the number of shares of the Class A Preferred Stock specified in said notice shall be redeemed by the Corporation at the redemption price and on the date specified in such notice and upon the surrender for cancellation, at the place designated in such notice, of the certificates representing the shares so to be redeemed. If notice of redemption shall have been mailed as herein provided, and if on or before the redemption date specified in such notice all funds necessary for such redemption shall have been irrevocably deposited or set aside by the Corporation so as to be available exclusively for such redemption, then upon making such deposit, the shares so to be redeemed shall no longer be deemed to be outstanding shares and all rights with respect to such shares shall forthwith cease except the right of the holders thereof to receive payment of the redemption price upon surrender of their certificates. Any interest accrued on any funds so deposited or set aside shall be paid to the Corporation. All shares of the Class A Preferred Stock which are redeemed shall be cancelled and retired and no shares shall be issued in place thereof.

(c) Class B Junior Cumulative, Preferred Stock

- (i) Voting Rights. Except as expressly provided by law, the holders of record of shares of the Class B Preferred Stock shall not have any voting rights.
- (ii) Dividends. After the requirements with respect to preferential dividends on the Class A Preferred Stock shall have been met, the holders of record of shares of the Class B Preferred Stock shall be entitled to receive, out of any funds legally available for the declaration of dividends, cumulative cash dividends at the rate of \$.60 per annum per share, payable quarterly on the last day of March, June, September and December of each year, beginning September 30, 1984. If the funds legally available for the payment of dividends, after the requirements with respect to preferential dividends on the Class A Preferred Stock shall have been met, shall be insufficient to pay in full the preferential dividends upon the Class B Preferred Stock, such dividends shall be paid ratably in accordance with the amounts which would be payable if such dividends were declared and payable in full. Dividends on each share of the Class B Preferred Stock shall accrue from and including the date of issue thereof. Arrears of dividends on the

Class B Preferred Stock shall not bear interest. So long as any shares of the Class B Preferred Stock are outstanding, the Corporation shall not declare or pay any dividends on the Class C Preferred Stock or the Common Stock (other than dividends payable in shares of any class junior to the Class B Preferred Stock) or make, directly or indirectly, any other distribution of any kind in respect of the Class C Preferred Stock or the Common Stock or make any payment on account of the redemption, purchase or other acquisition of the Class C Preferred Stock or the Common Stock, unless on the date of such declaration, in the case of a dividend, or on the date of such distribution or other payment, in the case of a distribution or payment, all dividends on the Class B Preferred Stock for all past dividend periods shall have been paid in full and the full amount of the then current annual dividend shall have been paid or declared and a sum sufficient for the payment thereof set apart.

- (iii) Distributions of Assets Upon Liquidation, Dissolution or Winding Up. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, each holder of the Class B Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to its shareholders, after payment in full of the preferential amounts to be distributed to the holders of the Class A Preferred Stock and before any amount shall be paid out of such assets to the holders of the Class C Preferred Stock or the Common Stock, \$10.00 per share, plus an amount equal to all cumulative dividends in arrears and the proportional part of any dividend accrued since the immediately preceding date for the payment of dividends to the date fixed for payment of such aggregate amount, but without interest, and the holders of the Class B Preferred Stock shall not be entitled to any other participation in or distribution from any remaining assets of the Corporation; provided, however, that if upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders, after payment in full of the preferential amounts to be distributed to the holders of the Class A Preferred Stock, shall be insufficient to pay in full the preferential amounts payable on the Class B Preferred Stock, then such assets shall be distributed among the holders of the Class B Preferred Stock ratably. Neither the consolidation or merger of the Corporation with any other corporation nor the sale or lease of all or substantially all of the assets of the Corporation shall be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this paragraph.

(iv) Redemption.

(A) Optional Redemption. The Class B Preferred Stock may be redeemed in whole at any time or in part from time to time, in such amounts and in such manner as may be determined by the Board of Directors in its sole discretion. The redemption price for the Class B Preferred Stock shall be \$10.00 per share, plus an amount equal to all cumulative dividends in arrears on such stock and the proportional part of the dividend accrued since the immediately preceding date for the payment of dividends to the date fixed for redemption, but without interest (the "Per Share Redemption Price").

(B) Mandatory Redemption. Subject to paragraph (ii) of Section (a) hereof, on September 1, of each year commencing in 1990, the Corporation shall redeem from the holder or holders of the outstanding shares of the Class B Preferred Stock, pro rata if there is more than one holder, 20% of the Class B Preferred Stock outstanding as of September 1, 1990, at the Per Share Redemption Price; provided, however, that if on any such redemption date the amount determined by multiplying the Per Share Redemption Price by the number of shares of the Class B Preferred Stock then to be redeemed shall exceed the amount of the funds of the Corporation legally available for such redemption, the Corporation shall be obligated to redeem only that number of shares of the Class B Preferred Stock the aggregate redemption price of which does not exceed the amount of such funds. The number of shares of the Class B Preferred Stock not redeemed by reason of the foregoing limitation shall be added to the number of shares of the Class B Preferred Stock to be redeemed on the next succeeding redemption date, until all of the outstanding shares of the Class B Preferred Stock have been redeemed. At its option, the Corporation may receive credit against the number of shares to be redeemed on any redemption date for any shares of the Class B Preferred Stock voluntarily redeemed by it pursuant to subparagraph (A) of this paragraph (iv) or otherwise voluntarily purchased by it, and not previously so credited.

Notice of the redemption of all or any part of the Class B Preferred Stock shall be given by mail to each holder of the Class B Preferred Stock not less than 15 nor more than 45 days prior to the date specified therein for such redemption at the address of such holder as it appears on

the stock transfer books of the Corporation. Such notice shall state that the number of shares of the Class B Preferred Stock specified in said notice shall be redeemed by the Corporation at the redemption price and on the date specified in such notice and upon the surrender for cancellation, at the place designated in such notice, of the certificates representing the shares so to be redeemed. If notice of redemption shall have been mailed as herein provided, and if on or before the redemption date specified in such notice all funds necessary for such redemption shall have been irrevocably deposited or set aside by the Corporation so as to be available exclusively for such redemption, then upon making such deposit, the shares so to be redeemed shall no longer be deemed to be outstanding shares and all rights with respect to such shares shall forthwith cease except the right of the holders thereof to receive payment of the redemption price upon surrender of their certificates. Any interest accrued on any funds so deposited or set aside shall be paid to the Corporation. All shares of the Class B Preferred Stock which are redeemed shall be cancelled and retired and no shares shall be issued in place thereof.

(d) Class C Convertible Preferred Stock

- (i) Voting Rights. Except as otherwise provided herein and by law, no holder of shares of Class C Preferred Stock shall have any voting rights. Except as set forth in Section 4(d)(v)(H) hereof, without the approval of the holders of (A) at least 60% of the shares of Class C Preferred Stock at the time outstanding, given in person or by proxy, at any annual meeting of shareholders or at a special meeting called for that purpose at which the holders of the Class C Preferred Stock shall vote separately as a class (one vote per share), or (B) all of the shares of Class C Preferred Stock at the time outstanding acting by written consent, the Corporation may not effect or validate any action authorized or otherwise approved by a vote of the holders of shares of Common Stock, including, without limitation, the election of directors.
- (ii) Dividends. After all preferential dividends shall have been paid or declared and set apart for payment on all classes of stock entitled thereto, each holder of shares of Class C Preferred Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors equal to the amount paid per share of Common Stock that such holder would be entitled to had such holder converted his Class C Preferred Stock into Common Stock at the Applicable Conversion Rate (as defined in Section 4(d)(iv)

hereof); provided, however, that no dividends shall be declared, paid or set apart for payment upon the Class C Preferred Stock unless there shall likewise be declared and set apart for payment upon the outstanding shares of Common Stock the dividends provided in Section 4(a)(ii) hereof.

(iii) Distributions of Assets Upon Liquidation, Dissolution or Winding Up. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, each holder of the Class C Preferred Stock shall be entitled to receive \$1.50 per share out of the assets of the Corporation available for distribution to its shareholders, after payment in full of the preferential amounts to be distributed to the holders of all classes of stock entitled thereto, and before any amount shall be paid out of such assets to the holders of the Common Stock. The holders of the Class C Preferred Stock shall not be entitled to any other participation in or distribution from any remaining assets of the Corporation; provided, however, that if upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders, after payment in full of the preferential amounts to be distributed to the holders of all classes of stock entitled thereto, shall be insufficient to pay in full the preferential amounts payable on the Class C Preferred Stock, then such assets shall be distributed among the holders of the Class C Preferred Stock ratably. Neither the consolidation or merger of the Corporation with any other corporation nor the sale or lease of all or substantially all of the assets of the Corporation shall be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this paragraph.

(iv) Conversion. Subject to the following terms and conditions, each share of Class C Preferred Stock is convertible at any time, at the option of the holder thereof, into fully paid and non-assessable shares of Common Stock at the Applicable Conversion Rate.

(A) To convert shares of Class C Preferred Stock, the record holder thereof shall deliver to the Corporation, at its principal office, the certificate representing the shares to be converted, duly endorsed or with duly executed stock powers attached.

(B) Conversion of shares of Class C Preferred Stock shall be deemed to have been effected as at the close of business on the date that the certificate shall have been delivered, as aforesaid, and the Corporation shall take all action necessary to cause the record holder thereof to become, as

of the close of business on that date, the holder of record of the shares of Common Stock issued upon such conversion.

- (C) As promptly as practicable and in no event more than ten business days after the date on which the certificate for the Class C Preferred Stock shall have been delivered, as aforesaid, the Corporation, at its expense, shall deliver to the record holder thereof (1) in the event of a full conversion of shares of Class C Preferred Stock represented by the certificate delivered, as aforesaid, a duly executed stock certificate (registered in the name of such holder) representing the aggregate number of whole shares of Common Stock issued upon such conversion, and (2) in the event of a partial conversion of shares of Class C Preferred Stock represented by the certificate delivered, as aforesaid, a duly executed stock certificate (registered in the name of such holder) representing the aggregate number of whole shares of Class C Preferred Stock not converted, plus, in either case, the Corporation's check representing payment in lieu of any fractional share of Common Stock resulting from such full or partial conversion, such fractional share to be valued at the applicable Market Price determined pursuant to Section 4(d)(iv)(D)(5) hereof.
- (D) The conversion rate of shares of Class C Preferred Stock into shares of Common Stock shall be 5.43 shares of Common Stock for each share of Class C Preferred Stock on the date of effectiveness of this Restated Certificate of Incorporation, and shall be adjusted from time to time (such rate, as so adjusted, the "Applicable Conversion Rate") as follows:
 - (1) In case the Corporation shall, at any time or from time to time while any of the shares of Class C Preferred Stock are outstanding, (I) pay a dividend on outstanding shares of Common Stock in shares of Common Stock, (II) subdivide outstanding shares of Common Stock into a greater number of shares, (III) combine outstanding shares of Common Stock into a smaller number of shares, or (IV) make any distribution of Common Stock of the Corporation (or another entity) with respect to Common Stock, whether in connection with a reclassification, recapitalization, merger, consolidation or other transaction, the conversion rate of shares of Class C Preferred Stock into shares of Common Stock in effect immediately prior to such action shall be

adjusted so that the holder of shares of Class C Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which such holder would have owned or have been entitled to receive immediately following such action had such shares of Class C Preferred Stock been converted immediately prior to the record date in the case of a dividend or distribution, and immediately prior to the effective date in the case of a subdivision or combination. An adjustment made pursuant to this Section 4(d)(iv)(D)(1) shall become effective immediately after the record date in the case of a dividend or distribution, and immediately after the effective date in the case of a subdivision or combination.

- (2) In case the Corporation shall, at any time or from time to time while any of the shares of Class C Preferred Stock are outstanding, issue rights or warrants to all holders of shares of Common Stock entitling them (for a period expiring within 45 days after the record date for the determination of shareholders entitled to receive such rights or warrants) to subscribe for or purchase shares of Common Stock (or securities convertible into or exchangeable for Common Stock) at a price per share less than the Market Price (as defined in Section 4(d)(iv)(D)(5) hereof), the conversion rate of shares of Class C Preferred Stock into shares of Common Stock shall be adjusted so that it shall equal the rate determined by multiplying the conversion rate in effect immediately prior to the date of issuance of such rights or warrants by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants plus the number of additional shares of Common Stock offered for subscription or purchase, and the denominator of which shall be the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants plus the number of shares of Common Stock which the aggregate offering price of the total number of shares so offered would purchase at the Market Price. In determining whether any rights or warrants entitle the holders of the shares of Common Stock to

subscribe for or purchase shares of Common Stock at less than the Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Corporation for such rights or warrants plus the exercise price thereof, the value of such consideration or exercise price, as the case may be, if other than cash, to be determined by the Board of Directors. For purposes of this Section 4(d)(iv)(D)(2), the issuance of rights or warrants to subscribe for or purchase securities convertible into or exchangeable for Common Stock shall be deemed to be the issuance of rights or warrants to purchase the shares of Common Stock into which such securities are convertible at an aggregate offering price equal to the aggregate offering price of such securities plus the minimum aggregate amount (if any) payable upon conversion of such securities into shares of Common Stock. An adjustment made pursuant to this Section 4(d)(iv)(D)(2) shall become effective immediately after the record date for the determination of shareholders entitled to receive such rights or warrants.

- (3) In case the Corporation shall, at any time or from time to time while any of the shares of Class C Preferred Stock are outstanding, distribute to all holders of shares of Common Stock evidences of indebtedness or securities or assets (excluding cash dividends payable out of retained earnings or consolidated earnings or dividends payable in shares of Common Stock) or rights or warrants to subscribe for securities of the Corporation (excluding those referred to in Section 4(d)(iv)(D)(2) hereof), then in each such case, unless the Corporation elects to reserve such evidences of indebtedness, securities, assets, rights or warrants for distribution to the holders of the shares of Class C Preferred Stock upon the conversion of the shares of Class C Preferred Stock so that any such holder converting shares of Class C Preferred Stock will receive upon such conversion, in addition to the shares of the Common Stock to which such holder is entitled, the amount and kind of such evidences of indebtedness, securities, assets, rights or warrants which such holder would have

received if such holder had, immediately prior to the record date for the distribution thereof, converted its shares of Class C Preferred Stock into Common Stock, the conversion rate of shares of Class C Preferred Stock into shares of Common Stock shall be adjusted so that it shall equal the rate determined by multiplying the conversion rate in effect immediately prior to the date of such distribution by a fraction, the numerator of which shall be the Market Price on the record date for the determination of shareholders entitled to receive such distribution, and the denominator of which shall be such Market Price less the then fair market value (as determined by the Board of Directors, whose determination shall be conclusive) of the portion of the evidences of indebtedness or securities or assets so distributed or of such subscription rights or warrants applicable to one share of Common Stock; provided, however, that in the event the then fair market value (as so determined) of the portion of such evidences of indebtedness, securities, assets, rights or warrants so distributed applicable to one share of Common Stock is equal to or greater than the Market Price of the Common Stock on the record date for the determination of shareholders entitled to receive such distribution, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of shares of Class C Preferred Stock shall have the right to receive the amount and kind of evidences of indebtedness, securities, assets, rights or warrants such holder would have received had such holder converted each such share of Class C Preferred Stock immediately prior to the record date for the distribution thereof. Such adjustment shall become effective immediately after the record date for the determination of shareholders entitled to receive such distribution.

- (4) If, pursuant to Section 4(d)(iv)(D)(2) or 4(d)(iv)(D)(3) hereof, the number of shares of Common Stock into which a share of Class C Preferred Stock is convertible shall have been adjusted because the Corporation has made a distribution on the outstanding shares of Common Stock in the form of any right or warrant to purchase securities of the Corporation, or the

Corporation has issued any such right or warrant, then, if all of the shares of Common Stock subject to such rights or warrants have not been issued when such rights or warrants expire, the conversion rate of shares of Class C Preferred Stock into shares of Common Stock shall be readjusted, effective as of the date of such expiration, to the conversion rate which would be in effect had the adjustment upon the distribution or issuance of such rights or warrants been made on the basis of the actual number of shares of Common Stock (or securities convertible into or exchangeable for Common Stock) issued upon the exercise of such rights or warrants.

- (5) As used herein, the current market price of a share of Common Stock (the "Market Price") on any date shall be the average of the daily closing prices of such Common Stock on the NASDAQ National Market System (or the principal national securities exchange, if any, on which the Common Stock shall be quoted) for ten (10) consecutive trading days before the date in question or, if no such closing prices are available, the fair market value of the Common Stock as determined by a New York Stock Exchange member firm regularly making a market in the Common Stock selected for such purpose by the Board of Directors or a committee thereof.
- (6) Whenever the conversion ratio is adjusted as herein provided, the Corporation shall file with the transfer agent of the Corporation a certificate, signed by the President or the chief financial officer of the Corporation, setting forth the conversion rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment; provided, however, that the failure of the Corporation to file such officer's certificate shall not invalidate any corporate action by the Corporation.

(v) Restrictions on Transferability

- (A) If any holder of shares of Class C Preferred Stock shall transfer, directly or indirectly, any share of Class C Preferred Stock, whether by sale, assignment, pledge, gift,

bequest, appointment or otherwise (each a "transfer"), each share of Class C Preferred Stock so transferred shall be deemed without further act on the part of any person to be converted into shares of Common Stock at the Applicable Conversion Rate and the stock certificate or certificates formerly representing such shares of Class C Preferred Stock shall thereupon and thereafter be deemed to represent, and upon conversion convert into, such shares of Common Stock, unless such Class C Preferred Stock was transferred to a Permitted Transferee (as defined below), or was transferred pursuant to Section 4(d)(v)(D) hereof.

- (1) In the case of a holder of Class C Preferred Stock who is a natural person holding record and beneficial ownership of the shares of Class C Preferred Stock in question, "Permitted Transferee" means (I) the spouse of such holder, any lineal descendant of a grandparent of such holder and/or spouse of such lineal descendant (collectively, the "Family Members"), (II) the trustee of a trust (including a voting trust) exclusively for the benefit of such holder and/or Family Members, provided, however, that such trust may grant a special power of appointment to any spouse of any beneficiary of the trust so long as such power of appointment is exercised solely in favor of a Permitted Transferee of such beneficiary, (III) an organization to which contributions are deductible for federal income, estate or gift tax purposes (a "Charitable Organization") and a majority of whose trustees, directors or members of similar governing body is composed of such holder and/or Family Members, (IV) a corporation in respect of which such holder and/or Family Members hold record and beneficial ownership of, and have the power to vote, more than 50% of the shares of capital stock of such corporation, (V) a partnership in respect of which such holder and/or Family Members own, directly or indirectly, at least a majority in interest of the general partnership shares or interests of the partnership, and at least a majority in interest of all partnership shares or interests of the partnership, (VI) the estate or any appointed guardian, custodian or other similar legal representative of such holder and/or Family Members, (VII) the Corporation, (VIII) Peter J. Solomon; Richard H. Solomon; Richard H. Solomon and Linda N. Solomon as

trustees U/A dated December 8, 1983 FBO Abigail R. Solomon; Richard H. Solomon and Linda N. Solomon as trustees U/A dated December 8, 1983 FBO Joshua N. Solomon; Richard H. Solomon and Linda N. Solomon as trustees U/A dated December 8, 1983 FBO Kate J. Solomon; and any other holder of Class C Preferred Stock who or which becomes a holder in accordance with subclause (I), (II), (III), (IV), (V), (VI) or (VIII) of this Section 4(d)(v)(A)(1), and (IX) a nominee of or other person holding record (but not beneficial) ownership of shares of Class C Preferred Stock on behalf of any person described in subclause (I), (II), (III), (IV), (V), (VI) or (VIII) of this Section 4(d)(v)(A)(1).

- (2) In the case of a holder of Class C Preferred Stock described in any of clauses (II), (III), (IV), (V), (VI), (VIII) and (IX) of Section 4(d)(v)(A)(1) hereof, "Permitted Transferee" also means a person described in any of the other such clauses, as well as clause (I).
- (3) In the case of a holder of Class C Preferred Stock holding the shares of Class C Preferred Stock in question as trustee pursuant to a trust, "Permitted Transferee" also means (I) the holder of Class C Preferred Stock who established such trust, and (II) a Permitted Transferee of the holder of Class C Preferred Stock who established such trust determined pursuant to Sections 4(d)(v)(A)(1) and 4(d)(v)(A)(2) hereof.
- (4) In the case of a holder of Class C Preferred Stock which is a corporation (other than a Charitable Organization) holding record and beneficial ownership of the shares of Class C Preferred Stock in question, "Permitted Transferee" also means (I) any shareholder of such corporation who is a holder of Class C Preferred Stock on the date of effectiveness of this Restated Certificate of Incorporation, (II) a Permitted Transferee of any such shareholder who is a holder of Class C Preferred Stock determined pursuant to Section 4(d)(v)(A)(1) or 4(d)(v)(A)(2) hereof, and (III) the survivor of a merger or consolidation of

such corporation provided that such survivor is a Permitted Transferee.

- (5) In the case of a holder of Class C Preferred Stock which is a partnership holding record and beneficial ownership of the shares of Class C Preferred Stock in question, "Permitted Transferee" also means (I) any partner of such partnership who is a holder of Class C Preferred Stock on the date of effectiveness of this Restated Certificate of Incorporation, and (II) a Permitted Transferee of any such partner who is a holder of Class C Preferred Stock determined pursuant to Section 4(d)(v)(A)(1) or 4(d)(v)(A)(2) hereof.
 - (6) In the case of a holder of Class C Preferred Stock which is the estate of a deceased holder or any appointed guardian, custodian or other similar legal representative of a holder, or a nominee of or other person holding record (but not beneficial) ownership of shares of Class C Preferred Stock on behalf of a holder, "Permitted Transferee" also means a Permitted Transferee of such holder as determined pursuant to Section 4(d)(v)(A)(1), 4(d)(v)(A)(2), 4(d)(v)(A)(3), 4(d)(v)(A)(4), or 4(d)(v)(A)(5) hereof, as the case may be.
- (B) Any holder of Class C Preferred Stock may pledge such holder's shares of Class C Preferred Stock to a pledgee pursuant to a bona fide pledge of such shares as collateral security for indebtedness due to the pledgee, provided that such shares shall not be transferred to or registered in the name of the pledgee and shall remain subject to the provisions of this Section 4(d)(v). In the event of foreclosure or other similar action by the pledgee, such pledged shares of Class C Preferred Stock may be transferred to a Permitted Transferee of the pledgor concurrently with such foreclosure or other similar action or, failing which, shall be deemed to be converted into shares of Common Stock at the Applicable Conversion Rate without further act on the part of any person.
- (C) Any direct or indirect failure on the part of any Permitted Transferee described in subclause (I) (in the case of any spouse of a permitted Transferee), (II), (III), (IV) or (V) of Section 4(d)(v)(A)(1) hereof to maintain or continue to satisfy at any time subsequent to any transfer all of the

beneficiary, governance, ownership and voting conditions, as the case may be, set forth in such subclause shall result in the transfer of shares of Class C Preferred Stock in question being deemed, as of the date of such failure, not to have been made to a Permitted Transferee. Without limiting the generality of the preceding sentence, any transfer of shares, equity interests, or voting power in a corporation or partnership described in Section 4(d)(v)(A)(1) hereof that results in the holder of Class C Preferred Stock and/or Family Members no longer (1) holding record and beneficial ownership of, and having the power to vote, more than 50% of the shares of capital stock of such corporation, or (2) owning, directly or indirectly, at least a majority in interest of the general partnership shares or interests of the partnership and at least a majority in interest of all partnership shares or interests of the partnership, as the case may be, shall result, as of the date of such transfer of shares, equity interests or voting power, in the transfer of shares of Class C Preferred Stock to such corporation or partnership being deemed not to have been made to a Permitted Transferee.

- (D) Notwithstanding anything to the contrary herein (including, without limitation, a transfer to a person who would otherwise qualify as a Permitted Transferee), any transfer of shares of Class C Preferred Stock for a consideration per share of Class C Preferred Stock in excess of the aggregate Market Price of the shares of Common Stock into which such share of Class C Preferred Stock is then convertible at the Applicable Conversion Rate shall be deemed not to have been made to a Permitted Transferee; provided, however, that all of the Class C Preferred Stock may be transferred to one or more third parties (whether or not Permitted Transferees) for consideration per share in excess of such aggregate Market Price in connection with the merger or consolidation of the Corporation with another entity or the acquisition of all of the Corporation's capital stock if the holders of each share of Class C Preferred Stock (1) receive the same price as is paid to the holders of the number of the shares of Common Stock into which such share of Class C Preferred Stock is then convertible at the Applicable Conversion Rate, and (2) are subject to other terms substantially the same as those to which the holders of Common Stock are subject.

- (E) For purposes of this Section 4(d)(v):
- (1) The relationship of any person that is derived by or through legal adoption shall be considered a natural one.
 - (2) Each joint owner of shares of Class C Preferred Stock shall be considered a holder of such shares of Class C Preferred Stock.
 - (3) A minor for whom shares of Class C Preferred Stock are held pursuant to the Uniform Gifts to Minors Act or similar law shall be considered a holder of such shares of Class C Preferred Stock.
 - (4) Unless otherwise specified, the term "person" means both natural persons and legal entities.
- (F) The Corporation shall, as a condition to the transfer or the registration of transfer of shares of Class C Preferred Stock to a purported Permitted Transferee, require the furnishing of such affidavits or other proof as it deems necessary to establish that such transferee is a Permitted Transferee. The Corporation shall note on the certificates for shares of Class C Preferred Stock the restrictions on transfer and registration of transfer imposed by this Section 4(d)(v).
- (G) The Corporation shall not at any time issue any shares of Class C Preferred Stock in addition to the shares of Class C Preferred Stock issued and outstanding on the date of effectiveness of this Restated Certificate of Incorporation, except to a person who is a holder of Class C Preferred Stock or a Permitted Transferee of such holder determined pursuant to this Section 4(d)(v).
- (H) The provisions of this Section 4(d)(v) may not be amended without the affirmative vote of the holders of at least a majority of the outstanding shares of Class C Preferred Stock and of at least two-thirds of the outstanding shares of Common Stock, each voting separately as a class. For purposes of a vote of holders of Common Stock under this Section 4(d)(v)(H), the provisions of the second sentence of Section 4(d)(i) hereof shall not apply.

(e) Serial Preferred Stock

The Board of Directors is hereby expressly authorized at any time, and from time to time, to provide for the issuance of shares of Serial Preferred Stock in one or more series, with

such voting powers, full or limited, or no voting powers, and with such designations, preferences and relative, participating, optional or other rights, and qualifications or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by a majority of the Board of Directors then in office, including (without limiting the generality thereof) the following as to each such series:

- (i) the distinctive designation of each such series and the number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors in creating such series) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;
- (ii) the dividends, if any, payable with respect to such series, the rates or basis for determining such dividends, any condition and date upon which such dividends shall be payable, the preferences, if any, of such dividends over, or the relation of such dividends to, the dividends payable on the Common Stock, the Preferred Stock or any other series of Serial Preferred Stock, whether dividends shall be noncumulative or cumulative, and, if cumulative, the date or dates from which such dividends shall be cumulative;
- (iii) whether shares of such series shall be redeemable at the option of the Board of Directors or the holder, or both, or upon the happening of a specified event and, if provision is made for such redemption, whether for cash, property or rights, including securities of the Corporation, the time, prices or rates and any adjustment and other terms and conditions of such redemption;
- (iv) the terms and amount of any sinking, retirement or purchase fund provided for the purchase or redemption of shares of such series;
- (v) whether shares of such series shall be convertible into or exchangeable for shares of Common Stock or any other series of Serial Preferred Stock, at the option of the Corporation or the holder, or both, or upon the happening of a specified event and, if provision be made for such conversion or exchange, the terms, prices, or rates, and any adjustment and other terms and conditions of such conversion or exchange;
- (vi) the extent, if any, to which the holders of shares of such series shall be entitled to vote with respect to the election of directors or otherwise, including, without limitation, the extent, if any, to which such holders shall be entitled, voting as a series or as a part of a class, to elect one or more directors upon the happening of a specified event or otherwise;

- (vii) the restrictions, if any, on the issuance or reissuance of shares of such series or any other series;
- (viii) the rights of the holders of shares of such series upon the liquidation of the Corporation or any distribution of its assets; and
- (ix) such other powers, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions as shall not be inconsistent with any such resolution or resolutions previously adopted as to shares then still outstanding, the provisions of this Restated Certificate of Incorporation, or with the laws of the State of New York.

5. No holder of any shares of capital stock of the Corporation, by reason of his ownership of shares of capital stock, shall have a preemptive or other right to purchase or subscribe for any part of the shares or any part of any note, debenture, bond, option, warrant or other security convertible into or carrying rights to purchase shares of the capital stock of the Corporation, issued or otherwise sold by the Corporation.

6. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(a) The Board of Directors shall consist of not less than three nor more than fifteen persons, the exact number to be fixed from time to time by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies; provided, however, that such maximum number may be increased from time to time to reflect the rights of holders of Serial Preferred Stock to elect directors in accordance with the terms of this Restated Certificate of Incorporation or of the resolution or resolutions adopted by a majority of the Board of Directors then in office providing for the issuance of shares of Serial Preferred Stock. Subject to the rights of holders of any other class of stock entitled to vote thereon, all directors shall be elected by a majority of the votes cast at a meeting of shareholders by the holders of shares of Common Stock, or by a written consent of the holders of all outstanding shares of Common Stock.

(b) From and after the time this Restated Certificate of Incorporation becomes effective, the Board of Directors shall be divided into two classes, designated Class 1 and Class 2. Each class shall consist, as nearly equal in number as possible, of one-half of the number of directors constituting the Board of Directors. The term of office for Class 1 directors will first expire at the 1992 annual meeting of shareholders; and the term of office of Class 2 directors will first expire at the 1993 annual meeting of shareholders; and in each case until their successors are duly elected and qualified. At each annual meeting of shareholders after the initial classification of directors, successors to the class of directors whose terms expire at that annual meeting of shareholders shall be elected by shareholders for a two-year term and until their successors are duly elected and qualified. No decrease in the size of the Board of Directors shall have the effect of removing or shortening the term of any incumbent director. Increases and decreases in the size of the Board of Directors will be distributed among the classes so as to render the classes as nearly equal in number as practicable. Whenever the holders of Serial Preferred Stock issued

pursuant to this Restated Certificate of Incorporation or the resolution or resolutions adopted by a majority of the Board of Directors then in office providing for the issuance of shares of Serial Preferred Stock shall have the right, voting as a separate class, to elect directors, the election, term of office, filling of vacancies and other terms of such directorships shall be governed by the terms of this Restated Certificate of Incorporation or such resolution or resolutions, as the case may be.

(c) Subject to the rights of the holders of Serial Preferred Stock, if any, any vacancy in the Board of Directors caused by an increase in the number of directors and/or from the removal from office, death, disability, resignation, retirement, disqualification of a director or any other cause may be filled solely by vote of a majority of the Board of Directors then in office; provided, however, that any vacancy created by the removal of a director by shareholders pursuant to subsection (d) of this Section 6 may be filled by action of the shareholders taken at the same meeting at which the vacancy was created; provided, further, that subject to the rights of holders of any other class of stock entitled to vote thereon, any such action shall be taken upon the affirmative vote of the holders of not less than a majority of the outstanding shares of Common Stock. Any director so elected by the Board of Directors shall hold office until the next annual meeting of shareholders at which the election of directors is in the regular order of business, and until his successor has been elected and qualified. Any director so elected by the shareholders shall hold office for the remaining term of the class in which such vacancy existed, and until his successor has been elected and qualified.

(d) Subject to the rights of the holders of Serial Preferred Stock, if any, to elect directors or to remove directors so elected, a duly elected director of the Corporation may not be removed from such position other than for cause, whether by vote of shareholders of the Corporation or by action of the Board of Directors.

(e) All shareholder actions must be considered and effected at either the annual meeting, a special meeting of shareholders held pursuant to this Section 6, or by a written consent of the holders of all outstanding shares of each class of stock entitled to vote thereon. At any annual or special meeting of shareholders, only such business shall be conducted as shall have been properly brought before the meeting. Except as otherwise provided in this Section 6 or by law, in order to be properly brought before the meeting, such business must have been either: (i) specified in the written notice of the meeting (or any supplement thereto) given to the shareholders of record on the record date for such meeting by or at the direction of the Board of Directors; (ii) brought before the meeting at the direction of the President or the Board of Directors; or (iii) specified in a written notice given by or on behalf of a shareholder of record on the record date for such meeting entitled to vote thereat or a duly authorized proxy for such shareholder, in accordance with all of the following requirements. A notice referred to in clause (iii) of the preceding sentence must be delivered personally to, or mailed to and received at, the principal executive office of the Corporation, addressed to the attention of the Secretary, not less than 120 days nor more than 180 days prior to the meeting; provided, however, that in the event that less than 50 days' notice or prior public disclosure of the date of the meeting is given or made to shareholders, notice by the shareholder to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the annual or special meeting was mailed or such public disclosure was made, whichever first occurs. Such notice referred to in clause (iii) of the third sentence of this subsection (e) shall set

forth: (A) a full description of each such item of business proposed to be brought before the meeting and the reasons for conducting such business at such meeting; (B) the name and address of the person proposing to bring such business before the meeting; (C) the class and number of shares held of record, held beneficially and represented by proxy by such person as of the record date for the meeting (if such date has then been made publicly available) and as of the date of such notice; (D) if any item of such business involves a nomination for director, all information regarding each such nominee that would be required to be set forth in a definitive proxy statement filed with the Securities and Exchange Commission (the "Commission") pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any successor thereto, and the written consent of each such nominee to serve if elected; (E) any material interest of the shareholder in such item of business; and (F) all other information that would be required to be filed with the Commission if, with respect to the business proposed to be brought before the meeting, the person proposing such business was a participant in a solicitation subject to Section 14 of the Exchange Act or any successor thereto. No business shall be brought before any meeting of shareholders of the Corporation otherwise than as provided in this subsection (e). The Board of Directors may require a proposed nominee for director to furnish such other information as may be required to be set forth in a shareholder's notice of nomination which pertains to the nominee or which may be reasonably required to determine the eligibility of such proposed nominee to serve as a director of the Corporation. The chairman of the meeting may, if the facts warrant, determine that a nomination or shareholder proposal was not made in accordance with the foregoing procedure, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination or proposal shall be disregarded.

(f) The annual meeting of shareholders of the Corporation for the election of directors and the transaction of such other business as may be brought before the meeting in accordance with this Restated Certificate of Incorporation shall be held on the date and the time fixed from time to time by the Board of Directors by a resolution adopted by the Board of Directors. Except as otherwise required by law, special meetings of shareholders may be called only at the direction of the President or the Board of Directors. Annual and special meetings of shareholders shall not be called or held otherwise than as herein provided.

(g) Any holder of shares of Serial Preferred Stock may exercise the special voting rights, if any, of such shares to elect directors upon the occurrence of certain events specified in the resolution or resolutions adopted by a majority of the Board of Directors then in office providing for the issuance of such shares of Serial Preferred Stock, in any manner now or hereafter permitted by this Restated Certificate of Incorporation or applicable law.

7. No director of the Corporation shall have any personal liability to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director (but not as an officer) of the Corporation to the fullest extent provided by the BCL, as amended from time to time. The provisions of this Section 7 shall not eliminate or limit (a) the liability of any director if a judgment or other final adjudication adverse to such director establishes (i) that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law, (ii) that such director personally gained in fact a financial profit or other advantage to which he was not legally entitled, or (iii) that such director's acts violated Section 719 of the BCL; or (b) the liability of any director for any act or omission prior to the adoption of this Restated Certificate of Incorporation. No amendment, modification or repeal of this Section 7

shall adversely affect any right or protection of a director that exists at the time of such amendment, modification or repeal.

8. The Corporation shall not purchase any shares of Common Stock from any Five Percent Shareholder (as defined below) at a price per share greater than the lesser of Cost (as defined below) or Market Price (as defined in Section 4(d)(iv)(D)(5) hereof), or on terms more favorable, when considered as a whole, than those otherwise available to the other holders of Common Stock, unless: (i) the selling Five Percent Shareholder beneficially owned such shares at least two years prior to the date of such purchase or any agreement in respect thereof; (ii) the Corporation makes an offer to all of its other holders of Common Stock to purchase from each such holder the same percentage of that holder's Common Stock as the Corporation intends to purchase from the Five Percent Shareholder, at the same price and on the same terms as the Five Percent Shareholder will receive; or (iii) subject to the rights of holders of any class of stock entitled to vote thereon, the holders of a majority of the Corporation's outstanding Common Stock entitled to vote approve of the Corporation's purchase of its Common Stock from the Five Percent Shareholder, at the intended price and upon the intended terms, with the Five Percent Shareholder not voting on such approval and the Common Stock held by the Five Percent Shareholder not counted as outstanding in calculating the number of votes required for approval. For purposes of this Section 8, (A) "Five Percent Shareholder" means any shareholder, or shareholders acting as a group, who individually or collectively, hold(s) five percent (5%) or more of the outstanding Common Stock, not including any treasury stock, and (B) "Cost" means the cost to the Five Percent Shareholder of the shares to be purchased by the Corporation.

9. Sections 6, 8, and 9 of this Restated Certificate of Incorporation, in addition to Section 4(d)(v) of this Restated Certificate of Incorporation (as set forth in Section 4(d)(v)(H)), may be amended only by the affirmative vote of holders of at least two-thirds of the outstanding shares of Common Stock, as well as any other vote required by this Restated Certificate of Incorporation or applicable law.

10. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against it may be served, and the address to which the Secretary of State shall mail a copy of process in any action or proceeding against the Corporation which may be served upon him is 2340 Brighton-Henrietta Town Line Road, Rochester, New York 14692."

FIFTH: This Restated Certificate of Incorporation of the Corporation was authorized by a unanimous written consent of the Board of Directors followed by a unanimous written consent of the holders of all outstanding shares of the Corporation entitled to consent thereto.

IN WITNESS WHEREOF, the undersigned, being the President and Secretary of the Corporation, have executed this certificate and affirmed that the statements made herein are true under the penalties of perjury this 19th day of July, 1991.

/s/ Jack M. Gallagher

Jack M. Gallagher
PRESIDENT

/s/ Robert W. August

Robert W. August
SECRETARY