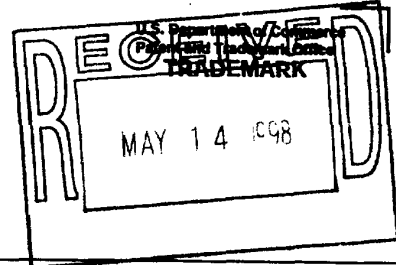


08-19-1998



100796571



RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

Result MRP 8.13.98

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

MRP 5-14-98

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  
Effective Date  
Month Day Year \_\_\_\_\_
- Merger
- Change of Name
- Other \_\_\_\_\_

Conveying Party

Mark if additional names of conveying parties attached

Name Mackie Enterprises, Inc

Execution Date  
Month Day Year

04101997

Formerly \_\_\_\_\_

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other \_\_\_\_\_

Citizenship/State of Incorporation/Organization California

Receiving Party

Mark if additional names of receiving parties attached

Name M2 Automotive, Inc.

DBA/AK/A/T/A \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) 1100 Colorado Blvd.

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

Address (line 3) Santa Monica  
City

California  
State/Country

90401  
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 California

FOR OFFICE USE ONLY

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06/01/1998 DCOATES 00000174 75267039

01 FC:481 40.00 OP  
02 FC:482 150.00 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: MARK  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231  
REEL: 1770 FRAME: 0047

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

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

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

Mark if additional numbers attached

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

Trademark Application Number(s)			Registration Number(s)		
<input type="text" value="75267039"/>	<input type="text" value="75266156"/>	<input type="text" value="75267038"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75266699"/>	<input type="text" value="75267141"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75267138"/>	<input type="text" value="75266357"/>	<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.



Cathleen M. Calkins

5/11/98

Name of Person Signing

Signature

Date Signed

A482469

FILED *Bgm*  
In the office of the Secretary of State  
of the State of California

1730503

RESTATED ARTICLES OF INCORPORATION

OF

MACKIE ENTERPRISES, INC.

OCT 08 1996

*Bill Jones*  
BILL JONES, Secretary of State

Bruce J. Mackie and Robert E. Amerine certify that:

1. They are the duly elected and acting President and Secretary, respectively, of said corporation.
2. The articles of incorporation of said corporation shall be amended and restated to read in full as follows:

I.

The name of the corporation is Mackie Enterprises, Inc. (hereinafter the "Corporation").

II.

This Corporation is a close corporation. All of the Corporation's issued shares of all classes shall be held of record by not more than thirty-five (35) persons.

III.

A. Authorized Shares. The Corporation is authorized to issue three classes of shares, which shall be designated "Common Stock," "Non-Voting Class B Common Stock," and "Preferred Stock." The total authorized number of shares that may be issued is 2,000,000 shares of Common Stock, 500,000 shares of Non-Voting Class B Common Stock and 300,000 shares of Preferred Stock, each of which shall have no par value per share. The rights, preferences, privileges and restrictions granted to and imposed upon the shares are set forth in this Article III. References herein to "common stock" shall refer collectively to the Common Stock and Non-Voting Class B Common Stock.

B. Dividends. The holders of the then outstanding Common Stock and Non-Voting Class B Common Stock shall be entitled to share equally and receive in cash, when, if and as declared by the Board of Directors, out of any funds legally available therefor, dividends at the applicable rate for each share of common stock. If dividends are declared which are payable in shares of Common Stock or Non-Voting Class B Common Stock, dividends will be declared which are payable at the same rate on both classes of common stock and such dividends of Common Stock shall only be payable to the holders of Common Stock and shares of Non-Voting Class B Common Stock shall only be payable to the holders of Non-Voting Class B Common Stock.

C. Ranking. Except as provided below, the Common Stock and Non-Voting Class B Common Stock shall have the same rights and privileges and shall rank equally, share ratably and be identical in all respects as to all matters, including rights in liquidation.

D. Voting rights. The holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the shareholders of the Corporation, and except as expressly required by law, the holders of Non-Voting Class B Common Stock shall have no right to vote on any matter to be voted on by the shareholders of the Corporation (including, without limitation, any election or removal of the directors of the Corporation) and the Non-Voting Class B Common Stock shall not be included in determining the number of shares voting or entitled to vote on such matters.

E. Redemption. Except as otherwise provided in any Certificate of Determination fixing the number of shares and designating any such series of Preferred Stock, the Corporation shall not have the right to purchase, call, redeem or otherwise acquire for value any or all of the Common Stock, Non-Voting Class B Common Stock or Preferred stock.

F. Conversion.

1. Conversion of Non-Voting Class B Common Stock. At any time and from time to time, each record holder of Non-Voting Class B Common Stock will be entitled to convert any and all of the shares of such holder's Non-Voting Class B Common Stock into the same number of shares of Common Stock at such holder's election; *provided, however, that each holder of Non-Voting Class B Common Stock shall only be entitled to convert any share or shares of Non-Voting Class B Common Stock to the extent that after giving effect to such conversion such holder or its affiliates shall not directly or indirectly own, control or have power to vote a greater quantity of securities of any kind issued by the Corporation than such holder and its affiliates are permitted to own, control or have power to vote under any applicable law or under any regulation, rule or other requirement of any governmental authority at any time applicable to such holder and its affiliates.* The conversion of shares of Non-Voting Class B Common Stock by a holder may, at the election of the holder, be conditioned upon a sale of such shares by it to a designated third party, whereupon the shares of underlying Common Stock shall be issued directly to such third party.

2. Time and Manner of Conversion. Each conversion of shares of Non-Voting Class B Common Stock into shares of Common Stock will be effected by the surrender of the certificate or certificates representing the shares to be converted at the principal office of the Corporation (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holder or holders of the Non-Voting Class B Common Stock) at any time during normal business hours, together with a written notice by the holder of such Non-Voting Class B Common Stock stating that such holder desires to convert the shares, or a stated number of the shares, of Non-Voting Class B Common Stock represented by such certificate or certificates into Common Stock and that



I. No Reissuance. Shares of Non-Voting Class B Common Stock which are converted into shares of Common Stock as provided herein shall be cancelled and shall not be reissued.

J. Reservation of Common Stock. The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Common Stock or its treasury shares, solely for the purpose of issue upon the conversion of the Non-Voting Class B Common Stock as provided in Paragraph F, such number of shares of Common Stock as shall then be issuable upon the conversion of all then outstanding shares of Non-Voting Class B Common Stock (assuming that all such shares of Non-Voting Class B Common Stock are held by persons entitled to convert such shares into Common Stock).

K. Preferred Stock. The Board of Directors is expressly authorized at any time, and from time to time, to provide for the issuance of shares of Preferred Stock in one or more series, with such voting powers, full or limited or without voting powers, and with such powers, designations, preferences and relative, participating, optional or other rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors, and as are not stated and expressed in these Restated Articles of Incorporation, or any amendment thereto, including (but without limiting the generality of the foregoing) the following:

- (i) The designation of and number of shares constituting such series;
- (ii) the dividend rate, if any, of such series, the conditions and dates upon which such dividends shall be payable, the preference or relation which such dividends shall bear to the dividends payable on any other class or classes or on any other series of any other class or classes of capital stock, and whether such dividends shall be cumulative or noncumulative;
- (iii) whether the shares of such series shall be subject to redemption by the corporation, and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption;
- (iv) the terms and amounts of any sinking fund provided for the purchase or redemption of the shares of such series;
- (v) the extent, if any, to which the shares of such series shall be convertible into or exchangeable for shares of any other class or classes or of any other series of any class or classes of capital stock of the corporation, and, if provision be made for conversion or exchange, the time, prices, rates, adjustments, and other terms and conditions of such conversion or exchange;

(vi) the extent, if any, to which the holders of the shares of such series shall be entitled to vote as a class or otherwise with respect to the election of directors or otherwise;

(vii) the restrictions, if any, on the issue or reissue of any additional Preferred Stock; and

(viii) the rights of the holders of the shares of such series upon the dissolution of, or upon the distribution of assets of, the Corporation.

L. No Preemptive Rights. No holder shall possess any preemptive right to subscribe to any issues of shares or securities by the Corporation.

M. Reclassification. Upon the filing of these Restated Articles of Incorporation, each of the shares of Common Stock then outstanding shall thereupon, without any further action by the holder, be reclassified into 200 shares of Common Stock.

#### IV.

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

#### V.

A. Indemnification of Corporate Agents. This Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject only to the applicable limits set forth in Section 204 of the Corporations Code with respect to actions for breach of duty to the corporation and its shareholders.

B. Limitation of Liability. The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

C. Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article V by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

#### VI.

Notwithstanding any other provision of these Restated Articles of Incorporation of the Corporation (and in addition to any other vote that may be required by law or these Restated Articles of Incorporation), the affirmative vote of the holders of at least a majority

of the outstanding shares of the stock of the Corporation entitled to vote generally in the election of directors shall be required to amend, alter, repeal or otherwise modify these Restated Articles of Incorporation, except amendments which are required to comply with California law. The foregoing sentence shall apply to any amendment pursuant to subdivision (c) of Section 158 of the Corporations Code notwithstanding the greater vote requirement otherwise provided for therein.

3. The foregoing amendment and restatement set forth herein have been duly approved by the Board of Directors of the Corporation.

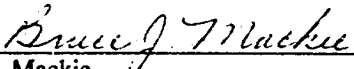
4. The foregoing amendment and restatement set forth herein have been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the Corporation's Common Stock is 5,000. All of such shares have been voted in favor of this amendment satisfying the vote required, such required vote being 100% of the outstanding shares of Common Stock.

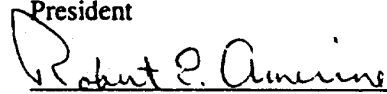
(Signature Page Follows)



We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATED: October 7, 1996

  
\_\_\_\_\_  
Bruce J. Mackie  
President

  
\_\_\_\_\_  
Robert E. Amerine  
Secretary

A482470

FILED *Bjm*

In the office of the Secretary of State  
of the State of California

OCT 08 1996

*Bill Jones*  
BILL JONES, Secretary of State

1730503

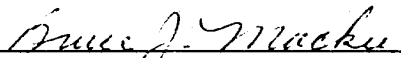
**CERTIFICATE OF DETERMINATION OF  
RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS OF  
SERIES A-1 SENIOR CONVERTIBLE PREFERRED STOCK AND SERIES A-2  
NON-VOTING SENIOR CONVERTIBLE PREFERRED STOCK OF  
MACKIE ENTERPRISES, INC.**

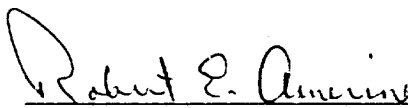
The undersigned, Bruce J. Mackie and Robert E. Arnerine, do hereby certify:

1. They are the duly elected and acting President and Secretary of Mackie Enterprises, Inc., a California corporation (the "Corporation").
2. The resolution attached hereto was duly adopted by the Board of Directors of the Corporation by unanimous written consent on October 4, 1996.
3. The number of shares of Series A-1 Senior Convertible Preferred Stock of the Corporation is 12,150 of which none have been issued. The number of shares of Series A-2 Non-Voting Senior Convertible Preferred Stock of the Corporation is 6,300 of which none have been issued.
4. Pursuant to the Restated Articles of Incorporation, Article III, Paragraph K, the authorized but unissued Preferred Stock may be issued by the Board of Directors of the Corporation.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate of Determination are true and correct of our own knowledge.

Executed at Los Angeles, California  
on October 7, 1996

  
\_\_\_\_\_  
Bruce J. Mackie, President

  
\_\_\_\_\_  
Robert E. Amerine, Secretary

RESOLVED, that the Board of Directors does hereby provide, pursuant to Article III, Paragraph K of the Restated Articles of Incorporation of the Corporation and Section 401 of the General Corporation Law of the State of California, for the authorization and issuance of two series of Convertible Preferred Stock of the Corporation to be known as the Series A-1 Senior Convertible Preferred Stock of the Corporation, which series shall consist of 12,150 shares, and the Series A-2 Non-Voting Senior Convertible Preferred Stock of the Corporation, which series shall consist of 6,300 shares and in each case shall have the rights, preferences, privileges and restrictions as follows:

Section 1. Definitions. For purposes of this Certificate of Determination, the following definitions shall apply:

- a. "Affiliate" of a person shall have the meaning specified in Rule 405 promulgated under the Securities Act of 1933, as amended.
- b. "Board" shall mean the Board of Directors of the Corporation.
- c. "Common Stock" shall mean the Common Stock, no par value per share, of the Corporation.
- d. "common stock" shall mean, collectively, the Common Stock and the Non-Voting Class B Common Stock.
- e. "Conversion Price" shall initially mean \$7.566 per share of Common Stock or Non-Voting Class B Common Stock, as applicable, and thereafter shall be subject to adjustment from time to time pursuant to the terms of Section 5 below.
- f. "Convertible Preferred Stock" shall mean collectively, the Series A-1 Senior Convertible Preferred Stock and Series A-2 Non-Voting Senior Convertible Preferred Stock.
- g. "Corporation" shall mean Mackie Enterprises, Inc., a California corporation.
- h. "Dividend Rate" shall mean the rate at which cash dividends are declared by the Board from time to time with respect to each share of common stock.
- i. "Non-Voting Class B Common Stock" shall mean the Non-Voting Class B Common Stock, no par value per share, of the Corporation.
- j. "Original Purchase Price" shall mean \$100.00 per share.
- k. "Series A-1 Preferred Stock" shall mean the Series A-1 Senior Convertible Preferred Stock, no par value per share, of the Corporation.
- l. "Series A-2 Preferred Stock" shall mean the Series A-2 Non-Voting Senior Convertible Preferred Stock, no par value per share, of the Corporation.

Section 2. Dividends. The holders of the then outstanding Convertible Preferred Stock shall be entitled to receive in cash, when, if and as declared by the Board, out of any funds legally available therefor, dividends at the applicable Dividend Rate for each share of common stock into which the Convertible Preferred Stock is then convertible concurrently with the payment of any cash dividends with respect to the common stock in any given fiscal year of the Corporation. Except for the rights to receive dividends paid on the common stock as provided in the foregoing sentence, dividends on the Convertible Preferred Stock shall not be mandatory or cumulative and no rights

shall accrue to the holders of Convertible Preferred Stock in the event that the Corporation shall fail to declare dividends on the Convertible Preferred Stock in respect of that or any previous fiscal year whether or not the earnings of the Corporation in that or any previous fiscal year were sufficient to pay cash dividends.

Section 3. Rank. Except as otherwise provided herein, the Series A-1 Preferred Stock and the Series A-2 Preferred Stock shall have the same rights and privileges and shall rank and share ratably and be identical in all respects as to all matters.

Section 4. Liquidation Rights of Convertible Preferred Stock.

a. Preference. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Convertible Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, whether such assets are capital, surplus, or earnings, after full provision has been made for any shares of Preferred Stock of the Corporation, ranking senior to the Convertible Preferred Stock on liquidation, but before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock, Non-voting Class B Common Stock or any other class of common stock hereinafter established including, without limitation, any warrants, rights, calls or options exercisable for any such other class of common stock hereinafter established. Each share of Convertible Preferred Stock will, upon any liquidation of the Corporation, receive the greater of (i) the Original Purchase Price of such Convertible Preferred Stock, accruing at the rate of seven percent (7%) per year from the time of original issuance, compounded quarterly (or such lesser amount as shall constitute all assets of the Corporation available for distribution to the holders of the Convertible Preferred Stock), or (ii) the amount the holder would receive if the Convertible Preferred Stock were converted into common stock in accordance with Section 6 hereof, at the time of the liquidation. The assets available for distribution shall be distributed to such holders pro rata in proportion to the number of shares of Convertible Preferred Stock held by each such holder.

b. Remaining Assets. After the payment or distribution to the holders of the Convertible Preferred Stock of the aforesaid, the holders of the Common Stock then outstanding shall be entitled to receive ratably all remaining assets of the Corporation to be distributed.

Section 5. Voting Rights.

a. General.

(i) Series A-1 Preferred Stock. The holders of shares of Series A-1 Preferred Stock shall be entitled to vote on all matters to come before the shareholders and shall be entitled to a number of votes equal to the number of shares of Common Stock into which such shares of Series A-1 Preferred Stock could be converted pursuant to the provisions of Section 6 hereof at the record date for the determination of the shareholders entitled to vote on such matters, or if no such record date is established, at the date such vote is taken.

(ii) Series A-2 Preferred Stock. The holders of shares of Series A-2 Preferred Stock shall have no voting rights, except as expressly required by law.

b. No Separate Class Vote. Except as otherwise expressly provided herein or as required by law, the holders of Series A-1 Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

Section 6. Conversion.

a. Right to Convert.

(i) Series A-1 Preferred Stock. Each share of Series A-1 Preferred Stock shall be convertible, at any time or from time to time at the option of the holder thereof, into fully paid and nonassessable shares of Common Stock.

(ii) Series A-2 Preferred Stock. Each share of Series A-2 Preferred Stock shall be convertible, at any time or from time to time at the option of the holder thereof, into fully paid and nonassessable shares of Non-Voting Class B Common Stock.

b. Conversion Price. Each share of Convertible Preferred Stock shall be valued at the Original Purchase Price, which shall be divided by the Conversion Price in effect on the conversion date to determine the number of shares of Common Stock or Non-Voting Class B Common Stock issuable upon conversion, as applicable.

c. Mechanics of Conversion. Each holder of Convertible Preferred Stock who desires to convert the same into shares of Common Stock or Non-Voting Class B Common Stock, as applicable, shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Convertible Preferred Stock being converted. Thereupon the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock or Non-Voting Class B Common Stock, as applicable, to which such holder is entitled and shall promptly pay in cash any declared and unpaid dividends on the shares of Convertible Preferred Stock being converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate representing the shares of Convertible Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock or Non-Voting Class B Common Stock, as applicable, issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock or Non-Voting Class B Common Stock, as applicable, on such date.

d. Mandatory Conversion. Upon the closing of an underwritten initial public offering by the Corporation or its successor in interest after which the Common Stock (or any successor security) is admitted for quotation on the Nasdaq National Market (or any successor thereto) or listed on a national securities exchange, each share of Convertible Preferred Stock shall automatically be converted into Common Stock at the Conversion Price then in effect; provided, however, that such shares of Convertible Preferred Stock shall only automatically convert into Common Stock to the extent that after giving effect to such conversion the holder of such shares or its Affiliates shall not directly or indirectly own, control or have power to vote a greater quantity of securities of any kind issued by the Corporation than such holder and its Affiliates are permitted to own, control or have power to vote under any applicable law or under any regulation, rule or other requirement of any governmental authority at any time applicable to such holder and its Affiliates, with any excess being automatically converted into Non-Voting Class B Common Stock.

e. Adjustment for Stock Splits, Combinations and Dividends. If the Corporation at any time or from time to time after the filing of this Certificate of Determination effects a subdivision of the outstanding Common Stock or Non-Voting Class B Common Stock, the Conversion Price for the Convertible Preferred Stock in effect immediately before that subdivision shall be proportionately decreased, and conversely, if the Corporation at any time or from time to time after the filing of this Certificate of Determination combines the outstanding shares of Common Stock or

Non-Voting Class B Common Stock into a smaller number of shares, the Conversion Price for the Convertible Preferred Stock in effect immediately before the combination shall be proportionately increased. If the Corporation at any time or from time to time after the filing of this Certificate of Determination makes or fixes a record date for the determination of holders of Common Stock or Non-Voting Class B Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Non-Voting Class B Common Stock, the Conversion Price for the Convertible Preferred Stock shall be proportionately decreased. Any adjustment under this subsection (e) shall become effective at the close of business on the date the subdivision, combination, or dividend becomes effective.

f. Adjustment for Other Dividends and Distributions. If the Corporation at any time or from time to time after the filing of this Certificate of Determination makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock or Non-Voting Class B Common Stock, in each such event provision shall be made so that the holders of the Convertible Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock or Non-Voting Class B Common Stock, as applicable, receivable thereupon, the amount of securities of the Corporation which they would have received had their Convertible Preferred Stock been converted into such Common Stock or Non-Voting Class B Common Stock, as applicable, on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 6 with respect to the rights of the holders of the Convertible Preferred Stock or with respect to such other securities by their terms.

g. Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the filing of this Certificate of Determination the Common Stock or Non-Voting Class B Common Stock, as applicable, issuable upon the conversion of the Convertible Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets, provided for elsewhere in this Section 6) in any such event each holder of the Convertible Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock or Non-Voting Class B Common Stock, as applicable, into which such shares of the Convertible Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

h. Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the filing of this Certificate of Determination there is a capital reorganization of the Common Stock or Non-Voting Class B Common Stock, as applicable, (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 6), or a merger or consolidation of the Corporation into or with another corporation, or the sale of all or substantially all the Corporation's properties and assets to any other person, as a part of such reorganization, merger, consolidation or sale, provision shall be made so that the holders of the Convertible Preferred Stock shall thereafter be entitled to receive upon conversion of the Convertible Preferred Stock the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger, consolidation or sale, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case,

appropriate adjustment shall be made in the application of the provisions of this Section 6 with respect to the rights of the holders of Convertible Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section 6 (including adjustment of the Conversion Price then in effect for the Convertible Preferred Stock and the number of shares purchasable upon conversion of the Convertible Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

i. Fractional Shares. No fractional shares of Common Stock or Non-Voting Class B Common Stock, as applicable, shall be issued upon conversion of Convertible Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of the Common Stock or the Non-Voting Class B Common Stock, as applicable, on the date of conversion.

j. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of common stock, solely for the purpose of effecting the conversion of the shares of the Convertible Preferred Stock, such number of its shares of Common Stock and Non-Voting Class B Common Stock, as applicable, as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Convertible Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock and Non-Voting Class B Common Stock, as applicable, shall not be sufficient to effect the conversion of all then outstanding shares of the Convertible Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock and Non-Voting Class B Common Stock, as applicable, to such number of shares as shall be sufficient for such purposes.

k. Notices. Any notice required by the provisions of this Section 8 to be given to holders of shares of the Convertible Preferred Stock shall be deemed given upon the earlier of actual receipt or one business day after delivery to a reputable overnight courier service (i.e., Federal Express), postage prepaid, or delivered by telecopy and promptly confirmed and addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

l. Payment of Taxes. The Corporation will pay all documentary stamp taxes that may be imposed by any governmental authority of the United States or any state or other political subdivision thereof with respect to the issue or delivery of shares of Common Stock and Non-Voting Class B Common Stock, as applicable, upon conversion of shares of Convertible Preferred Stock, including without limitation any such documentary stamp tax imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock and Non-Voting Class B Common Stock, as applicable, in a name other than that in which the shares of Convertible Preferred Stock so converted were registered.

m. No Dilution or Impairment. The Corporation shall not amend its Restated Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or 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 Corporation, but shall 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 the holders of the Convertible Preferred Stock against dilution or other impairment.

n. Cancellation of Convertible Preferred Stock on Conversion. All certificates of the Convertible Preferred Stock surrendered for conversion shall be appropriately canceled on the books of the Corporation, and the shares so converted represented by such certificates shall not be reissuable as shares of the Convertible Preferred Stock so converted, but shall instead be restored to



the status of authorized but unissued Preferred Stock of the Corporation, undesignated as to the series and subject to designation by the Board of Directors of the Corporation pursuant to Article III, Paragraph K of the Restated Articles of Incorporation.

o. Notice of Certain Events. In case the Company after the date hereof shall propose to (i) pay any dividend or to make any other distribution to the holders of shares of common stock, (ii) offer to the holders of shares of common stock rights to subscribe for or purchase any additional shares of any class of stock or any other rights or options or (iii) effect any reclassification of the common stock (other than a reclassification involving merely the subdivision or combination of outstanding shares of common stock), or any capital reorganization or any consolidation or merger (other than a merger in which no distribution of securities or other property is to be made to holders of shares of common stock), or any sale, transfer or other disposition of its property, assets and business as an entirety or substantially as an entirety, or the liquidation, dissolution or winding up of the Corporation, then, in each such case, the Corporation shall mail to each of the record holders of the Convertible Preferred Stock at its address appearing in the Corporation's stock register, written notice of such proposed action, which shall specify the date on which the stock transfer books of the Corporation shall close, or a record shall be taken, for determining the holders of common stock entitled to receive such dividends or other distribution or such rights or options, or the date on which such reclassification, reorganization, consolidation, merger, sale, transfer, other disposition, liquidation, dissolution or winding up shall take place or commence, as the case may be, and the date as of which it is expected that holders of common stock of record shall be entitled to receive securities or other property deliverable upon such action, if any such date is to be fixed. Such notice shall be mailed in the case of any action covered by clauses (i), (ii) or (iii) above at least ten (10) days prior to the record date for determining holders of common stock for purposes of participation in such corporate event. Failure to file any certificate or notice or to mail any notice, or any defect in any certificate or notice pursuant to this subsection shall not affect the legality or validity of the adjustment of the Conversion Price or the number of shares issuable upon conversion of the Convertible Preferred Stock, or any transaction giving rise thereto.

Section 7. No Redemption. The Corporation shall not have the right to purchase, call, redeem or otherwise acquire for value any or all of the Convertible Preferred Stock.

Section 8. Certain Limitations. Nothing contained in this Certificate of Determination shall have the effect of in any way limiting the authority of the Board of Directors or Shareholders to designate in the future one or more classes or series of Preferred Stock with rights, preferences, privileges and restrictions superior to, or on parity with, the Convertible Preferred Stock designated hereinabove, including specifically any rights of any future class or series to receive dividends, participate in the assets of the Corporation upon liquidation, vote or convert into other debt or equity securities of the corporation.

\* \* \* \* \*

A482627

FILED  
In the Office of the Secretary of State  
of the State of California

1730503

OCT 10 1996

AGREEMENT OF MERGER

This Agreement of Merger is entered into as of the 7th day of October, 1996 by and among MACKIE ENTERPRISES, INC., a California corporation ("Surviving Corporation"), WIEGAND-MACKIE, INC., a California corporation ("Wiegand-Mackie"), CALIFORNIA COLLISION CENTERS, INC., a California corporation ("Prestige") and COAST COLLISION CENTER, INC., a California corporation ("Coast"). Wiegand-Mackie, Prestige and Coast are collectively referred to herein as the "Merging Corporations".

1. Merging Corporations shall be merged into Surviving Corporation.
2. Upon the effective date of the merger, in accordance with the applicable Agreement and Plan of Merger entered into with each Merging Corporation, the shareholders of each Merger Corporation and Surviving Corporation, each outstanding share of (i) Wiegand-Mackie shall be converted into the right to receive an amount equal to \$2,798,000 less the existing indebtedness (as finalized upon audit), divided by the total number of shares outstanding (2,000 shares); (ii) Prestige shall be converted into the right to receive an amount equal to \$452,000 less the existing indebtedness (as finalized upon audit), divided by the total number of shares outstanding (2,000 shares); and (iii) Coast shall be converted into the right to receive an amount equal to \$433,000 less the existing indebtedness (as finalized upon audit), divided by the total number of shares outstanding (2,000 shares). Upon such conversion, the outstanding shares of Merging Corporations shall be canceled and no shares of Surviving Corporation shall be issued in exchange therefor. The outstanding shares of Surviving Corporation shall remain outstanding.
3. Merging Corporations shall from time to time, as and when requested by Surviving Corporation, execute and deliver all such documents and instruments and take all such action necessary or desirable to evidence or carry out this merger.
4. The effect of the merger shall be as prescribed by law and the effective date of the merger shall be October 10, 1996.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

MACKIE ENTERPRISES, INC.

By Bruce J. Mackie  
Name: Bruce J. Mackie  
Title: President

By Robert E. Amerine  
Name: Robert E. Amerine  
Title: Secretary

WIEGAND-MACKIE, INC.

By Nels P. Wiegand  
Name: Nels P. Wiegand  
Title: President

By Bruce J. Mackie  
Name: Bruce J. Mackie  
Title: Secretary

CALIFORNIA COLLISION CENTERS, INC.

By Nels P. Wiegand  
Name: Nels P. Wiegand  
Title: President

By Bruce J. Mackie  
Name: Bruce J. Mackie  
Title: Secretary

COAST COLLISION CENTER, INC.

By Thomas C. Williamson  
Name: Thomas C. Williamson  
Title: President

By Bruce J. Mackie  
Name: Bruce J. Mackie  
Title: Secretary

CERTIFICATE OF APPROVAL

OF

AGREEMENT OF MERGER

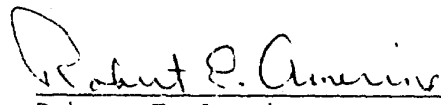
Bruce J. Mackie and Robert E. Amerine certify that:

1. They are the President and the Secretary, respectively, of Mackie Enterprises, Inc., a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and the shareholders of the corporation.
3. The shareholder approval was by the holder of 100% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding at the record date for shareholder approval was 5,000 shares of Common Stock.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: October 1, 1996

  
\_\_\_\_\_  
Bruce J. Mackie  
President

  
\_\_\_\_\_  
Robert E. Amerine  
Secretary

TRADEMARK

REF: 1770 FRAME: 0066

CERTIFICATE OF APPROVAL  
OF  
AGREEMENT OF MERGER

Nels P. Wiegand and Bruce J. Mackie certify that:

1. They are the President and the Secretary, respectively, of Wiegand-Mackie, Inc., a California corporation.

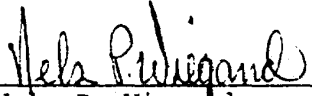
2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and the shareholders of the corporation.

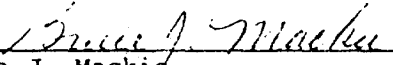
3. The shareholder approval was by the holder of 100% of the outstanding shares of the corporation.

4. There is only one class of shares and the number of shares outstanding are 2,000 shares of Common Stock.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: October 7, 1996

  
\_\_\_\_\_  
Nels P. Wiegand  
President

  
\_\_\_\_\_  
Bruce J. Mackie  
Secretary

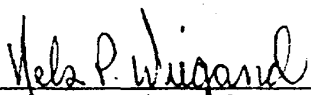
**CERTIFICATE OF APPROVAL**  
**OF**  
**AGREEMENT OF MERGER**

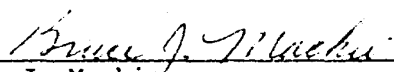
Nels P. Wiegand and Bruce J. Mackie certify that:

1. They are the President and the Secretary, respectively, of California Collision Centers, Inc., a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and the shareholders of the corporation.
3. The shareholder approval was by the holder of 100% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding are 2,000 shares of Common Stock.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: October 7, 1996

  
\_\_\_\_\_  
Nels P. Wiegand  
President

  
\_\_\_\_\_  
Bruce J. Mackie  
Secretary

CERTIFICATE OF APPROVAL  
OF  
AGREEMENT OF MERGER

Thomas C. Williamson and Bruce J. Mackie certify that:

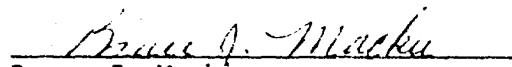
1. They are the President and the Secretary, respectively, of Coast Collision Center , Inc., a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and the shareholders of the corporation.
3. The shareholder approval was by the holder of 100% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding are 2,000 shares of Common Stock.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: October 7, 1996



Thomas C. Williamson  
President



Bruce J. Mackie  
Secretary

A494496

#1730503

CERTIFICATE OF AMENDMENT  
OF  
RESTATED ARTICLES OF INCORPORATION  
OF  
MACKIE ENTERPRISES, INC.

FILED  
In the office of the Secretary of State  
of the State of California

JUL - 9 1997

*Bill Jones*  
BILL JONES, Secretary of State

The undersigned certify that:


1. They are the President and the Secretary, respectively, of Mackie Enterprises, Inc., a California corporation (the "corporation").
2. Article I of the Restated Articles of Incorporation of this corporation is amended to read as follows:  
  
"The name of the corporation is M2 Automotive, Inc. (hereinafter the "Corporation")."
3. The foregoing amendment of the Restated Articles of Incorporation has been duly approved by the Board of Directors.
4. The foregoing amendment of the Restated Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of the corporation's Common Stock is 570,303 and the total number of outstanding shares of the corporation's Preferred Stock entitled to vote is 12,150. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.

(Signature page follows)



We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: April 10, 1997



\_\_\_\_\_  
D. Hunt Ramsbottom, Jr.,  
President



\_\_\_\_\_  
Steven V. Cotton  
Secretary

A495929

1730503

FILED *Bjm*  
In the office of the Secretary of State  
of the State of California

SECOND RESTATED ARTICLES OF INCORPORATION AUG 12 1997

OF

*Bill Jones*  
BILL JONES, Secretary of State

M2 AUTOMOTIVE, INC.

D. Hunt Ramsbottom, Jr. and Steven V. Cotton certify that:

1. They are the duly elected and acting President and Secretary, respectively, of said corporation.

2. The articles of incorporation of said corporation shall be amended and restated to read in full as follows:

I.

The name of the corporation is M2 Automotive, Inc. (hereinafter the "Corporation").

II.

This Corporation is a close corporation. All of the Corporation's issued shares of all classes shall be held of record by not more than thirty-five (35) persons.

III.

A. Authorized Shares. The Corporation is authorized to issue four classes of shares, which shall be designated "Common Stock," "Non-Voting Class B Common Stock," "Non-Voting Class C Common Stock," and "Preferred Stock." The total authorized number of shares that may be issued is 30,000,000 shares of Common Stock, 5,000,000 shares of Non-Voting Class B Common Stock, 5,000,000 shares of Non-Voting Class C Common Stock and 1,000,000 shares of Preferred Stock, each of which shall have no par value per share. The rights, preferences, privileges and restrictions granted to and imposed upon the shares are set forth in this Article III and, with respect to the series of Preferred Stock established therein, Article IV. References herein to "common stock" shall refer collectively to the Common Stock, Non-Voting Class B Common Stock and Non-Voting Class C Common Stock.

B. Dividends. The holders of the then outstanding Common Stock, Non-Voting Class B Common Stock and Non-Voting Class C Common Stock shall be entitled to share equally and receive in cash, when, if and as declared by the Board of Directors, out of any funds legally available therefor, dividends at the applicable rate for each share of common stock. If dividends are declared which are payable in shares of Common Stock, Non-Voting Class B Common Stock or Non-Voting Class C Common Stock, as the case may be, dividends will be declared which are payable at the same rate on all such classes of

common stock and such dividends of Common Stock shall only be payable to the holders of Common Stock, shares of Non-Voting Class B Common Stock shall only be payable to the holders of Non-Voting Class B Common Stock and shares of Non-Voting Class C Common Stock shall only be payable to the holders of Non-Voting Class C Common Stock.

C. Ranking. Except as provided below, the Common Stock, Non-Voting Class B Common Stock and Non-Voting Class C Common Stock shall have the same rights and privileges and shall rank equally, share ratably and be identical in all respects as to all matters, including rights in liquidation.

D. Voting rights. The holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the shareholders of the Corporation, and except as expressly required by law, the holders of Non-Voting Class B Common Stock and Non-Voting Class C Common Stock shall have no right to vote on any matter to be voted on by the shareholders of the Corporation (including, without limitation, any election or removal of the directors of the Corporation) and the Non-Voting Class B Common Stock and Non-Voting Class C Common Stock shall not be included in determining the number of shares voting or entitled to vote on such matters.

E. Redemption. Except as otherwise provided in any Certificate of Determination fixing the number of shares and designating any such series of Preferred Stock, the Corporation shall not have the right to purchase, call, redeem or otherwise acquire for value any or all of the Common Stock, Non-Voting Class B Common Stock, Non-Voting Class C Common Stock or Preferred stock.

F. Conversion of Non-Voting Class B Common Stock.

1. Conversion of Non-Voting Class B Common Stock. At any time and from time to time, each record holder of Non-Voting Class B Common Stock will be entitled to convert any and all of the shares of such holder's Non-Voting Class B Common Stock into the same number of shares of Common Stock at such holder's election; *provided, however,* that each holder of Non-Voting Class B Common Stock shall only be entitled to convert any share or shares of Non-Voting Class B Common Stock to the extent that after giving effect to such conversion such holder or its affiliates shall not directly or indirectly own, control or have power to vote a greater quantity of securities of any kind issued by the Corporation than such holder and its affiliates are permitted to own, control or have power to vote under any applicable law or under any regulation, rule or other requirement of any governmental authority at any time applicable to such holder and its affiliates. The conversion of shares of Non-Voting Class B Common Stock by a holder may, at the election of the holder, be conditioned upon a sale of such shares by it to a designated third party, whereupon the shares of underlying Common Stock shall be issued directly to such third party.

2. Time and Manner of Conversion. Each conversion of shares of Non-Voting Class B Common Stock into shares of Common Stock will be effected by the surrender of the certificate or certificates representing the shares to be converted at the

principal office of the Corporation (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holder or holders of the Non-Voting Class B Common Stock) at any time during normal business hours, together with a written notice by the holder of such Non-Voting Class B Common Stock stating that such holder desires to convert the shares, or a stated number of the shares, of Non-Voting Class B Common Stock represented by such certificate or certificates into Common Stock and that upon such conversion such holder and its affiliates will not directly or indirectly own, control or have the power to vote a greater quantity of securities of any kind issued by the Corporation than such holder and its affiliates are permitted to own, control or have power to vote under any applicable law or under any regulation, rule or other requirement of any governmental authority (and delivery of such written notice shall satisfy the *proviso* in clause 1 above). Such conversion will be deemed to have been effected as of the close of business on the date which such certificate or certificates have been surrendered and such notice has been received, and at such time the rights of the holder of the converted Non-Voting Class B Common Stock as such holder will cease and the person or persons in whose name or names the certificate or certificates for shares of Common Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

3. Issuance of Certificates. Promptly after such surrender and the receipt of such written notice, the Corporation will issue and deliver in accordance with the surrendering holder's instructions (i) the certificate or certificates for the Common Stock issuable upon such conversion and (ii) a certificate representing any Non-Voting Class B Common Stock which was represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which was not converted.

G. Mandatory Exchange of Non-Voting Class C Common Stock. Upon the closing of an underwritten initial public offering by the Corporation or its successor in interest after which the Common Stock (or any successor security) is admitted for quotation on the Nasdaq National Market (or any successor thereto) or listed on a national securities exchange (a "Qualified IPO"), each share of Non-Voting Class C Common Stock shall be exchanged into one share of Common Stock without any action by the holder thereof. Promptly upon and after the closing of a Qualified IPO, the Corporation will, upon delivery to the Corporation by a holder of shares of Non-Voting Class C Common Stock of the certificate or certificates representing such shares, a replacement certificate of certificates representing a like number of shares of Common Stock. Unless and until a Qualified IPO occurs, no holder of Non-Voting Class C Common Stock shall have any right to convert such shares into any other class of the Corporation's common stock.

H. Adjustments. If the Corporation in any manner subdivides or combines the outstanding shares of one class of either Common Stock, Non-Voting Class B Common Stock or Non-Voting Class C Common Stock, the outstanding shares of each other class of common stock will be proportionately subdivided or combined.

I. No Dilution. In the case of, and as a condition to, any capital reorganization of, or any reclassification of the capital stock of, the Corporation (other than a

subdivision or combination of shares of Common Stock, Non-Voting Class B Common Stock or Non-Voting Class C Common Stock into a greater or lesser number of shares (whether with or without par value) or a change in the par value of Common Stock, Non-Voting Class B Common Stock or Non-Voting Class C Common Stock or from no par value to par value, or from par value to no par value) or in the case of, and as condition to, the consolidation or merger of the Corporation with or into another corporation (other than a merger in which the corporation is the continuing corporation and which does not result in any reclassification of outstanding shares of Common Stock, Non-Voting Class B Common Stock or Non-Voting Class C Common Stock), each share of Non-Voting Class B Common Stock and Non-Voting Class C Common Stock shall be convertible or mandatorily exchangeable, as the case may be, into the number of shares of stock or other securities or property receivable upon such reorganization, reclassification, consolidation or merger by a holder of the number of shares of Common Stock of the Corporation into which such share of Non-Voting Class B Common Stock or Non-Voting Class C Common Stock was convertible or mandatorily exchangeable, as the case may be, immediately prior to such reorganization, reclassification, consolidation or merger; and, in any such case, appropriate adjustment shall be made in the application of the provisions set forth in Paragraphs F and G with respect to the rights and interests thereafter of the holders of Non-Voting Class B Common Stock and Non-Voting Class C Common Stock to the end that the provisions set forth in Paragraphs F and G shall thereafter be applicable, as nearly as they reasonably may be, in relation to any shares of stock or other securities or property thereafter deliverable upon the conversion or mandatory exchange, as the case may be, of the shares of Non-Voting Class B Common Stock or Non-Voting Class C Common Stock.

J. No Reissuance. Shares of Non-Voting Class B Common Stock which are converted into shares of Common Stock as provided herein shall be cancelled and shall not be reissued. Shares of Non-Voting Class C Common Stock which are mandatorily exchanged for shares of Common Stock as provided herein shall be cancelled and shall not be reissued.

K. Reservation of Common Stock. The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Common Stock or its treasury shares, solely for the purpose of issue upon the conversion of the Non-Voting Class B Common Stock as provided in Paragraph F or issue upon the mandatory exchange of the Non-Voting Class C Common Stock as provided in Paragraph G, such number of shares of Common Stock as shall then be issuable upon the conversion of all then outstanding shares of Non-Voting Class B Common Stock (assuming that all such shares of Non-Voting Class B Common Stock are held by persons entitled to convert such shares into Common Stock) or upon the mandatory exchange of all then outstanding shares of Non-Voting Class C Common Stock.

L. Preferred Stock. Of the authorized Preferred Stock of the Corporation, 12,150 of such shares shall be designated as the Series A-1 Senior Convertible Preferred Stock of the Corporation, and 6,300 of such shares shall be designated as the Series A-2 Non-Voting Senior Convertible Preferred Stock of the Corporation, which, in each case, shall have the powers, designations, preferences and relative, participating, optional or other

rights, and qualifications, limitations or restrictions thereof set forth in Article IV hereof. In addition, the Board of Directors is expressly authorized at any time, and from time to time, to provide for the issuance of additional shares of Preferred Stock in one or more series, with such voting powers, full or limited or without voting powers, and with such powers, designations, preferences and relative, participating, optional or other rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors, and as are not stated and expressed in these Second Restated Articles of Incorporation, or any amendment thereto, including (but without limiting the generality of the foregoing) the following:

- (i) The designation of and number of shares constituting such series;
- (ii) the dividend rate, if any, of such series, the conditions and dates upon which such dividends shall be payable, the preference or relation which such dividends shall bear to the dividends payable on any other class or classes or on any other series of any other class or classes of capital stock, and whether such dividends shall be cumulative or noncumulative;
- (iii) whether the shares of such series shall be subject to redemption by the corporation, and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption;
- (iv) the terms and amounts of any sinking fund provided for the purchase or redemption of the shares of such series;
- (v) the extent, if any, to which the shares of such series shall be convertible into or exchangeable for shares of any other class or classes or of any other series of any class or classes of capital stock of the corporation, and, if provision be made for conversion or exchange, the time, prices, rates, adjustments, and other terms and conditions of such conversion or exchange;
- (vi) the extent, if any, to which the holders of the shares of such series shall be entitled to vote as a class or otherwise with respect to the election of directors or otherwise;
- (vii) the restrictions, if any, on the issue or reissue of any additional Preferred Stock; and
- (viii) the rights of the holders of the shares of such series upon the dissolution of, or upon the distribution of assets of, the Corporation.

M. No Preemptive Rights. No holder shall possess any preemptive right to subscribe to any issues of shares or securities by the Corporation.

N. Reclassification. Upon the filing of these Second Restated Articles of Incorporation, each of the shares of Common Stock then outstanding shall thereupon, without any further action by the holder, be reclassified into 10 shares of Common Stock and each of the shares of Non-Voting Class B Common Stock then outstanding shall thereupon, without any further action by the holder, be reclassified into 10 shares of Non-Voting Class B Common Stock.

#### IV.

A. Definitions. For purposes of this Article IV, the following definitions shall apply:

1. "Affiliate" of a person shall have the meaning specified in Rule 405 promulgated under the Securities Act of 1933, as amended.
2. "Board" shall mean the Board of Directors of the Corporation.
3. "Conversion Price" shall initially mean \$0.7566 per share of Common Stock or Non-Voting Class B Common Stock, as applicable, and thereafter shall be subject to adjustment from time to time pursuant to the terms of Section F below.
4. "Convertible Preferred Stock" shall mean collectively, the Series A-1 Senior Convertible Preferred Stock and Series A-2 Non-Voting Senior Convertible Preferred Stock.
5. "Dividend Rate" shall mean the rate at which cash dividends are declared by the Board from time to time with respect to each share of common stock.
6. "Original Purchase Price" shall mean \$100.00 per share.
7. "Series A-1 Preferred Stock" shall mean the Series A-1 Senior Convertible Preferred Stock, no par value per share, of the Corporation.
8. "Series A-2 Preferred Stock" shall mean the Series A-2 Non-Voting Senior Convertible Preferred Stock, no par value per share, of the Corporation.

B. Dividends. The holders of the then outstanding Convertible Preferred Stock shall be entitled to receive in cash, when, if and as declared by the Board, out of any funds legally available therefor, dividends at the applicable Dividend Rate for each share of common stock into which the Convertible Preferred Stock is then convertible concurrently with the payment of any cash dividends with respect to the common stock in any given fiscal year of the Corporation. Except for the rights to receive dividends paid on the common stock as provided in the foregoing sentence, dividends on the Convertible Preferred Stock shall not be mandatory or cumulative and no rights shall accrue to the holders of Convertible

Preferred Stock in the event that the Corporation shall fail to declare dividends on the Convertible Preferred Stock in respect of that or any previous fiscal year whether or not the earnings of the Corporation in that or any previous fiscal year were sufficient to pay cash dividends.

C. Rank. Except as otherwise provided herein, the Series A-1 Preferred Stock and the Series A-2 Preferred Stock shall have the same rights and privileges and shall rank and share ratably and be identical in all respects as to all matters.

D. Liquidation Rights of Convertible Preferred Stock.

1. Preference. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Convertible Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, whether such assets are capital, surplus, or earnings, after full provision has been made for any shares of Preferred Stock of the Corporation, ranking senior to the Convertible Preferred Stock on liquidation, but before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock, Non-Voting Class B Common Stock or any other class of common stock hereinafter established including, without limitation, any warrants, rights, calls or options exercisable for any such other class of common stock hereinafter established. Each share of Convertible Preferred Stock will, upon any liquidation of the Corporation, receive the greater of (i) the Original Purchase Price of such Convertible Preferred Stock, accreting at the rate of seven percent (7%) per year from the time of original issuance, compounded quarterly (or such lesser amount as shall constitute all assets of the Corporation available for distribution to the holders of the Convertible Preferred Stock), or (ii) the amount the holder would receive if the Convertible Preferred Stock were converted into common stock in accordance with Section F hereof, at the time of the liquidation. The assets available for distribution shall be distributed to such holders pro rata in proportion to the number of shares of Convertible Preferred Stock held by each such holder.

2. Remaining Assets. After the payment or distribution to the holders of the Convertible Preferred Stock of the aforesaid, the holders of the Common Stock then outstanding shall be entitled to receive ratably all remaining assets of the Corporation to be distributed.

E. Voting Rights.

1. General.

(i) Series A-1 Preferred Stock. The holders of shares of Series A-1 Preferred Stock shall be entitled to vote on all matters to come before the shareholders and shall be entitled to a number of votes equal to the number of shares of Common Stock into which such shares of Series A-



1 Preferred Stock could be converted pursuant to the provisions of Section F hereof at the record date for the determination of the shareholders entitled to vote on such matters, or if no such record date is established, at the date such vote is taken.

(ii) Series A-2 Preferred Stock. The holders of shares of Series A-2 Preferred Stock shall have no voting rights, except as expressly required by law.

2. No Separate Class Vote. Except as otherwise expressly provided herein or as required by law, the holders of Series A-1 Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

F. Conversion.

1. Right to Convert.

(i) Series A-1 Preferred Stock. Each share of Series A-1 Preferred Stock shall be convertible, at any time or from time to time at the option of the holder thereof, into fully paid and nonassessable shares of Common Stock.

(ii) Series A-2 Preferred Stock. Each share of Series A-2 Preferred Stock shall be convertible, at any time or from time to time at the option of the holder thereof, into fully paid and nonassessable shares of Non-Voting Class B Common Stock.

2. Conversion Price. Each share of Convertible Preferred Stock shall be valued at the Original Purchase Price, which shall be divided by the Conversion Price in effect on the conversion date to determine the number of shares of Common Stock or Non-Voting Class B Common Stock issuable upon conversion, as applicable.

3. Mechanics of Conversion. Each holder of Convertible Preferred Stock who desires to convert the same into shares of Common Stock or Non-Voting Class B Common Stock, as applicable, shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Convertible Preferred Stock being converted. Thereupon the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock or Non-Voting Class B Common Stock, as applicable, to which such holder is entitled and shall promptly pay in cash any declared and unpaid dividends on the shares of Convertible Preferred Stock being converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate representing the shares of Convertible Preferred Stock to

be converted, and the person entitled to receive the shares of Common Stock or Non-Voting Class B Common Stock, as applicable, issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock or Non-Voting Class B Common Stock, as applicable, on such date.

4. Mandatory Conversion. Upon the closing of an underwritten initial public offering by the Corporation or its successor in interest after which the Common Stock (or any successor security) is admitted for quotation on the Nasdaq National Market (or any successor thereto) or listed on a national securities exchange, each share of Convertible Preferred Stock shall automatically be converted into Common Stock at the Conversion Price then in effect; *provided, however,* that such shares of Convertible Preferred Stock shall only automatically convert into Common Stock to the extent that after giving effect to such conversion the holder of such shares or its Affiliates shall not directly or indirectly own, control or have power to vote a greater quantity of securities of any kind issued by the Corporation than such holder and its Affiliates are permitted to own, control or have power to vote under any applicable law or under any regulation, rule or other requirement of any governmental authority at any time applicable to such holder and its Affiliates, with any excess being automatically converted into Non-Voting Class B Common Stock.

5. Adjustment for Stock Splits, Combinations and Dividends. If the Corporation at any time or from time to time after the filing of these Second Restated Articles of Incorporation effects a subdivision of the outstanding Common Stock or Non-Voting Class B Common Stock, the Conversion Price for the Convertible Preferred Stock in effect immediately before that subdivision shall be proportionately decreased, and conversely, if the Corporation at any time or from time to time after the filing of these Second Restated Articles of Incorporation combines the outstanding shares of Common Stock or Non-Voting Class B Common Stock into a smaller number of shares, the Conversion Price for the Convertible Preferred Stock in effect immediately before the combination shall be proportionately increased. If the Corporation at any time or from time to time after the filing of these Second Restated Articles of Incorporation makes or fixes a record date for the determination of holders of Common Stock or Non-Voting Class B Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Non-Voting Class B Common Stock, the Conversion Price for the Convertible Preferred Stock shall be proportionately decreased. Any adjustment under this subsection 5 shall become effective at the close of business on the date the subdivision, combination, or dividend becomes effective.

6. Adjustment for Other Dividends and Distributions. If the Corporation at any time or from time to time after the filing of these Second Restated Articles of Incorporation makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock or Non-Voting Class B Common Stock, in each such event provision shall be made so that the holders of the of Convertible Preferred Stock shall receive upon conversion thereof,

in addition to the number of shares of Common Stock or Non-Voting Class B Common Stock, as applicable, receivable thereupon, the amount of securities of the Corporation which they would have received had their Convertible Preferred Stock been converted into such Common Stock or Non-Voting Class B Common Stock, as applicable, on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section F with respect to the rights of the holders of the Convertible Preferred Stock or with respect to such other securities by their terms.

7. Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the filing of these Second Restated Articles of Incorporation the Common Stock or Non-Voting Class B Common Stock, as applicable, issuable upon the conversion of the Convertible Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets, provided for elsewhere in this Section F) in any such event each holder of the Convertible Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock or Non-Voting Class B Common Stock, as applicable, into which such shares of the Convertible Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

8. Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the filing of these Second Restated Articles of Incorporation there is a capital reorganization of the Common Stock or Non-Voting Class B Common Stock, as applicable, (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section F), or a merger or consolidation of the Corporation into or with another corporation, or the sale of all or substantially all the Corporation's properties and assets to any other person, as a part of such reorganization, merger, consolidation or sale, provision shall be made so that the holders of the Convertible Preferred Stock shall thereafter be entitled to receive upon conversion of the Convertible Preferred Stock the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger, consolidation or sale, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section F with respect to the rights of the holders of Convertible Preferred Stock after the reorganization, merger,

consolidation or sale to the end that the provisions of this Section F (including adjustment of the Conversion Price then in effect for the Convertible Preferred Stock and the number of shares purchasable upon conversion of the Convertible Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

9. Fractional Shares. No fractional shares of Common Stock or Non-Voting Class B Common Stock, as applicable, shall be issued upon conversion of Convertible Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of the Common Stock or the Non-Voting Class B Common Stock, as applicable, on the date of conversion.

10. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of common stock, solely for the purpose of effecting the conversion of the shares of the Convertible Preferred Stock, such number of its shares of Common Stock and Non-Voting Class B Common Stock, as applicable, as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Convertible Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock and Non-Voting Class B Common Stock, as applicable, shall not be sufficient to effect the conversion of all then outstanding shares of the Convertible Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock and Non-Voting Class B Common Stock, as applicable, to such number of shares as shall be sufficient for such purposes.

11. Notices. Any notice required by the provisions of this Section F to be given to holders of shares of the Convertible Preferred Stock shall be deemed given upon the earlier of actual receipt or one business day after delivery to a reputable overnight courier service (i.e., Federal Express), postage prepaid, or delivered by telecopy and promptly confirmed and addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

12. Payment of Taxes. The Corporation will pay all documentary stamp taxes that may be imposed by any governmental authority of the United States or any state or other political subdivision thereof with respect to the issue or delivery of shares of Common Stock and Non-Voting Class B Common Stock, as applicable, upon conversion of shares of Convertible Preferred Stock, including without limitation any such documentary stamp tax imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock and Non-Voting Class B Common Stock, as applicable, in a name other than that in which the shares of Convertible Preferred Stock so converted were registered.

13. No Dilution or Impairment. The Corporation shall not amend these Second Restated Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or 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 Corporation, but shall 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 the holders of the Convertible Preferred Stock against dilution or other impairment.

14. Cancellation of Convertible Preferred Stock on Conversion. All certificates of the Convertible Preferred Stock surrendered for conversion shall be appropriately cancelled on the books of the Corporation, and the shares so converted represented by such certificates shall not be reissuable as shares of the Convertible Preferred Stock so converted, but shall instead be restored to the status of authorized but unissued Preferred Stock of the Corporation, undesignated as to the series and subject to designation by the Board of Directors of the Corporation pursuant to Article III, Paragraph L hereof.

15. Notice of Certain Events. In case the Company after the date hereof shall propose to (i) pay any dividend or to make any other distribution to the holders of shares of common stock, (ii) offer to the holders of shares of common stock rights to subscribe for or purchase any additional shares of any class of stock or any other rights or options or (iii) effect any reclassification of the common stock (other than a reclassification involving merely the subdivision or combination of outstanding shares of common stock), or any capital reorganization or any consolidation or merger (other than a merger in which no distribution of securities or other property is to be made to holders of shares of common stock), or any sale, transfer or other disposition of its property, assets and business as an entirety or substantially as an entirety, or the liquidation, dissolution or winding up of the Corporation, then, in each such case, the Corporation shall mail to each of the record holders of the Convertible Preferred Stock at its address appearing in the Corporation's stock register, written notice of such proposed action, which shall specify the date on which the stock transfer books of the Corporation shall close, or a record shall be taken, for determining the holders of common stock entitled to receive such dividends or other distribution or such rights or options, or the date on which such reclassification, reorganization, consolidation, merger, sale, transfer, other disposition, liquidation, dissolution or winding up shall take place or commence, as the case may be, and the date as of which it is expected that holders of common stock of record shall be entitled to receive securities or other property deliverable upon such action, if any such date is to be fixed. Such notice shall be mailed in the case of any action covered by clauses (i), (ii) or (iii) above at least ten (10) days prior to the record date for determining holders of common stock for purposes of participation in such corporate event. Failure to file any certificate or notice or to mail any notice, or any defect in any certificate or notice pursuant to this subsection 15 shall not affect the legality or validity of the adjustment of the Conversion Price or the number of shares issuable upon conversion of the Convertible Preferred Stock, or any transaction giving rise thereto.

G. No Redemption. The Corporation shall not have the right to purchase, call, redeem or otherwise acquire for value any or all of the Convertible Preferred Stock.

H. Certain Limitations. Nothing contained in these Second Restated Articles of Incorporation shall have the effect of in any way limiting the authority of the Board of Directors or Shareholders to designate in the future one or more classes or series of Preferred Stock with rights, preferences, privileges and restrictions superior to, or on parity with, the Convertible Preferred Stock designated hereinabove, including specifically any rights of any future class or series to receive dividends, participate in the assets of the Corporation upon liquidation, vote or convert into other debt or equity securities of the corporation.

V.

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

VI.

A. Indemnification of Corporate Agents. This Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject only to the applicable limits set forth in Section 204 of the Corporations Code with respect to actions for breach of duty to the corporation and its shareholders.

B. Limitation of Liability. The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

C. Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article V by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

VII.

Notwithstanding any other provision of these Second Restated Articles of Incorporation of the Corporation (and in addition to any other vote that may be required by law or these Second Restated Articles of Incorporation), the affirmative vote of the holders of at least a majority of the outstanding shares of the stock of the Corporation entitled to vote generally in the election of directors shall be required to amend, alter, repeal or otherwise modify these Second Restated Articles of Incorporation, except amendments which are required to comply with California law. The foregoing sentence shall apply to any

amendment pursuant to subdivision (c) of Section 158 of the Corporations Code notwithstanding the greater vote requirement otherwise provided for therein.

3. The foregoing amendment and restatement set forth herein have been duly approved by the Board of Directors of the Corporation.


4. The foregoing amendment and restatement set forth herein have been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the Corporation's Common Stock is 570,303 and the total number of outstanding shares of the Corporation's Preferred Stock entitled to vote is 12,150. All of such shares have been voted in favor of this amendment satisfying the vote required, such required vote being a majority of the outstanding shares of Common Stock.

5. The foregoing amendment and restatement set forth herein have been duly approved by the required vote of each class of shareholders in accordance with Section 903 of the Corporations Code. The total number of outstanding shares of the Corporation's Common Stock is 570,303, the total number of outstanding shares of the Corporation's Non-Voting Class B Common Stock is 71,212, the total number of outstanding shares of the Corporation's Series A-1 Senior Convertible Preferred Stock is 12,150 and the total number of outstanding shares of the Corporation's Series A-2 Non-Voting Senior Convertible Preferred Stock is 6,300. All of such shares have been voted in favor of this amendment satisfying the vote required, such required vote being a majority of the outstanding shares of each class of shares.

*(Signature Page Follows)*

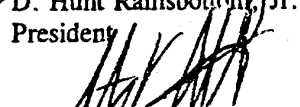
We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATED: August 11, 1997



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D. Hunt Ramsbottom, Jr.  
President



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Steven V. Cotton  
Secretary



A0500767

**FILED** *MEL*  
In the office of the Secretary of State  
of the State of California

DEC 1 1997

1730563

**CERTIFICATE OF DETERMINATION OF  
RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS OF  
SERIES B NON-VOTING SENIOR REDEEMABLE PREFERRED STOCK OF  
M2 AUTOMOTIVE, INC.**


*Bill Jones*  
BILL JONES, Secretary of State


The undersigned, D. Hunt Ramsbottom, Jr. and Steven V. Cotton, do hereby certify:

1. They are the duly elected and acting President and Secretary of M2 Automotive, Inc., a California corporation (the "Corporation").
2. The resolution attached hereto was duly adopted by the Board of Directors of the Corporation by unanimous written consent without a meeting as of November 20, 1996.
3. The number of shares of Series B Non-Voting Senior Redeemable Preferred Stock of the Corporation is 1,000, of which none have been issued.
4. Pursuant to the Second Restated Articles of Incorporation, Article III, Paragraph I., the Board of Directors of the Corporation is authorized to provide for the issuance of shares of Preferred Stock in one or more series, with such voting powers, full or limited or without voting powers, and with such powers, designations, preferences and relative, participating, optional or other rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate of Determination are true and correct of our own knowledge.

Executed at Santa Monica, California  
on November 21, 1997

  
\_\_\_\_\_  
D. Hunt Ramsbottom, Jr., President

  
\_\_\_\_\_  
Steven V. Cotton, Secretary

RESOLVED, that pursuant to the authority vested in the Board of Directors by Article III, Section L of the Second Amended Articles of Incorporation of the Corporation, the Board of Directors does hereby designate, create, authorize and provide for the issue of Series B Non-Voting Senior Redeemable Preferred Stock, no par value per share (the "Series B Preferred Stock"), consisting of 1,000 shares and having the rights, preferences, privileges and restrictions as follows:

Section 1. Definitions. For purposes of this Certificate of Determination, the following definitions shall apply:

- a. "Board" shall mean the Board of Directors of the Corporation.
- b. "Common Stock" shall mean the Common Stock, no par value per share, of the Corporation.
- c. "common stock" shall mean, collectively, the Common Stock, the Non-Voting Class B Common Stock and the Non-Voting Class C Common Stock.
- d. "Corporation" shall mean M2 Automotive, Inc., a California corporation.
- e. "Non-Voting Class B Common Stock" shall mean the Non-Voting Class B Common Stock, no par value per share, of the Corporation.
- f. "Non-Voting Class C Common Stock" shall mean the Non-Voting Class C Common Stock, no par value per share, of the Corporation.
- g. "Original Purchase Price" shall mean \$1,000 per share.
- h. "Series A-1 Preferred Stock" shall mean the Series A-1 Senior Convertible Preferred Stock, no par value per share, of the Corporation.
- i. "Series A-2 Preferred Stock" shall mean the Series A-2 Non-Voting Senior Convertible Preferred Stock, no par value per share, of the Corporation.

Section 2. Dividends. The holders of shares of the Series B Preferred Stock shall not be entitled to receive dividends thereon.

Section 3. Liquidation Rights of Preferred Stock.

- a. Preference. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series B Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, whether such assets are capital, surplus, or earnings, before any payment or declaration and setting apart for payment of any amount shall be made in respect of any other class or series of capital stock of the Corporation including, without limitation, the Series A-1,

Preferred Stock, Series A-2 Preferred Stock, any class of Common Stock or any other class of preferred stock or common stock hereinafter established including, without limitation, any warrants, rights, calls or options exercisable for any such other class of preferred stock or common stock hereinafter established. Each share of Series B Preferred Stock will, upon any liquidation of the Corporation, receive the Original Purchase Price of such Series B Preferred Stock, accreting at the rate of six percent (6%) per year from the time of original issuance, compounded quarterly (or such lesser amount as shall constitute all assets of the Corporation available for distribution to the holders of the Series B Preferred Stock) (such amount, the "Liquidation Preference"). The assets available for distribution shall be distributed to such holders *pro rata* in proportion to the number of shares of Series B Preferred Stock held by each such holder.

b. Remaining Assets. After the payment or distribution to the holders of the Series B Preferred Stock and other series of preferred stock of the Corporation, the holders of the Common Stock then outstanding shall be entitled to receive ratably all remaining assets of the Corporation to be distributed.

Section 4. Voting Rights. The holders of shares of Series B Preferred Stock shall have no voting rights, except as expressly required by law.

Section 5. Redemption.

a. Mandatory Redemption.

(i) The Series B Preferred Stock is subject to mandatory redemption ("Mandatory Redemption") on the first to occur of (i) January 31, 2003 (the "Maturity Date") and (ii) receipt by the Corporation of cash in excess of \$2,500,000 on a cumulative basis in respect of the new issuance of equity securities of the Corporation subsequent to December 1, 1997 (the "Refinancing"), in either case at a price per share equal to 100% of the Liquidation Preference to the date of redemption (the "Redemption Price").

(ii) Upon the occurrence of a Mandatory Redemption all outstanding shares of Series B Preferred Stock shall be redeemed simultaneously.

(iii) In the event that a Mandatory Redemption is required by a Refinancing, a notice of such Mandatory Redemption shall be sent by or on behalf of the Corporation not more than 5 days after the Refinancing, by first class mail, postage prepaid, to all holders of record of the Series B Preferred Stock at their last addresses as they shall appear on the books of the Corporation; *provided, however*, that no failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of the Series B Preferred Stock except as to the holder to whom the Corporation has failed to give notice or except as to the holder to whom notice was defective. The notice shall specify the date for redemption (the "Mandatory Redemption Date"), which date shall be not more than 15 days after the

Refinancing. In addition to any information required by law or by the applicable rules of any exchange upon which Series B Preferred Stock may be listed or admitted to trading, such notice shall state: (i) the Redemption Date; (ii) the Redemption Price; (iii) the number of shares of Series B Preferred Stock to be redeemed; (iv) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price, including any procedures applicable to redemptions to be accomplished through book-entry transfers; and (v) that the Liquidation Preference of the Series B Preferred Stock shall cease to accrete on the Redemption Date.

(iv) Provided that on or before such date payment is made or irrevocably deposited in trust as provided herein, from and after the first to occur of (i) a Mandatory Redemption Date and (ii) the Maturity Date, the Liquidation Preference of the Series B Preferred Stock shall cease to accrete, and said shares shall no longer be deemed to be outstanding and shall not have the status of shares of Series B Preferred Stock, and all rights of the holders thereof as shareholders of the Corporation (except the right to receive from the Corporation the Redemption Price) shall cease. Upon surrender of the certificates representing the shares of Series B Preferred Stock (properly endorsed or assigned for transfer, if the Corporation shall so require and any related notice shall so state), such shares shall be redeemed by the Corporation at the Redemption Price, payable in cash.

b. Redemption at the Option of the Corporation.

(i) On or after the date hereof, the Series B Preferred Stock may be redeemed, in whole or in part, at the option of the Corporation ("Optional Redemption"), at the Redemption Price.

(ii) In case of an Optional Redemption of less than all of the shares of Series B Preferred Stock at the time outstanding, the shares to be redeemed shall be selected *pro rata* or by lot as determined by the Corporation in its sole discretion.

(iii) Notice of any Optional Redemption shall be sent by or on behalf of the Corporation not less than 10 nor more than 60 days prior to the date specified for redemption in such notice (the "Redemption Date"), by first class mail, postage prepaid, to all holders of record of the Series B Preferred Stock at their last addresses as they shall appear on the books of the Corporation; *provided, however*, that no failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series B Preferred Stock except as to the holder to whom the Corporation has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series B Preferred Stock may be listed or admitted to trading, such notice shall state: (i) the Redemption Date; (ii) the Redemption Price; (iii) the number of shares of Series B Preferred Stock to be redeemed and, if less than all shares held by such holder are to be redeemed, the number of such shares to be redeemed; (iv) the place or places where certificates for such shares are to be

surrendered for payment of the Redemption Price, including any procedures applicable to redemptions to be accomplished through book-entry transfers; and (v) that the Series B Preferred Stock shall cease to accrete on the Redemption Date. Upon the mailing of any such notice of redemption, the Corporation shall become obligated to redeem at the time of redemption specified thereon all shares called for redemption; *provided, however*, that such notice of redemption and related Redemption Date may be conditioned on the occurrence of a specified event (*e.g.*, a financing transaction) that Maker reasonably expects to occur not more than thirty (30) days after the related notice.

(iv) If notice has been mailed in accordance with clause (iii) above and provided that on or before the Redemption Date specified in such notice, all funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds in trust for the *pro rata* benefit of the holders of the shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Redemption Date, the Series B Preferred Stock so called for redemption shall cease to accrete, and said shares shall no longer be deemed to be outstanding and shall not have the status of shares of Series B Preferred Stock, and all rights of the holders thereof as shareholders of the Corporation (except the right to receive from the Corporation the Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the Redemption Price. In case fewer than all the shares represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares without cost to the holder thereof.

c. Funds Deposited in Trust. Any funds deposited with a bank or trust company for the purpose of redeeming Series B Preferred Stock shall be irrevocable except that:

(i) the Corporation shall be entitled to receive from such bank or trust company the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

(ii) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series B Preferred Stock entitled thereto at the expiration of two years from the applicable Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

d. Funds Legally Available. No Series B Preferred Stock may be redeemed except with funds legally available for the purpose. The Corporation shall take all actions required or permitted under the California Corporations Code to permit any such redemption.

e. Redeemed Shares. All shares of Series B Preferred Stock redeemed pursuant to this Section 6 shall be restored to the status of authorized and unissued shares of preferred stock, without designation as to series, and may thereafter be reissued as shares of any series of preferred stock other than shares of Series B Preferred Stock.

Section 7. Certain Limitations. The Board of Directors and Shareholders of the Corporation shall have no authority to designate in the future any class or series of preferred stock with rights, preferences, privileges and restrictions superior to, or on parity with, the Series B Preferred Stock designated hereinabove with respect to participation in the assets of the Corporation upon liquidation unless and until (i) 100% of the shares of the Series B Preferred Stock have been redeemed by the Corporation as provided herein or (ii) holders of a majority of the outstanding shares of Series B Preferred Stock shall have consented to such action in writing.

\* \* \* \*

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CERTIFICATE OF DETERMINATION OF

FILED *BJM*  
In the office of the Secretary of State  
of the State of California

RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS OF FEB 18 1998

SERIES C 10% REDEEMABLE PARTICIPATING

*Bill Jones*  
BILL JONES, Secretary of State

SENIOR PREFERRED STOCK OF

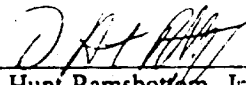
M2 AUTOMOTIVE, INC.

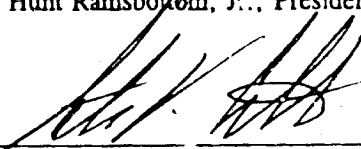
The undersigned, D. Hunt Ramsbottom, Jr. and Steven V. Cotton, do hereby certify:

1. They are the duly elected and acting President and Secretary of M2 Automotive, Inc., a California corporation (the "Corporation").
2. The resolution attached hereto was duly adopted by the Board of Directors of the Corporation by unanimous written consent without a meeting as of February 10, 1998.
3. The number of shares of Series C 10% Redeemable Participating Senior Preferred Stock of the Corporation is 15,000, of which none have been issued.
4. Pursuant to the Second Restated Articles of Incorporation of the Corporation, Article III, Paragraph L, the Board of Directors of the Corporation is authorized to provide for the issuance of shares of Preferred Stock in one or more series, with such voting powers, full or limited or without voting powers, and with such powers, designations, preferences and relative, participating, optional or other rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate of Determination are true and correct of our own knowledge.

Executed at Santa Monica, California  
on February 17, 1998

  
\_\_\_\_\_  
D. Hunt Ramsbottom, Jr., President

  
\_\_\_\_\_  
Steven V. Cotton, Secretary

TRADEMARK

REEL: 170 FRAME: 0093

RESOLVED, that pursuant to the authority vested in the Board of Directors by Article III, Section L of the Second Restated Articles of Incorporation of the Corporation, the Board of Directors does hereby designate, create, authorize and provide for the issue of Series C 10% Redeemable Participating Senior Preferred Stock, no par value per share (the "Senior Preferred Stock"), consisting of 15,000 shares and having the rights, preferences, privileges and restrictions as follows:

Section 1. Definitions. For purposes of this Certificate of Determination, the following definitions shall apply:

"Articles of Incorporation" shall mean the Second Restated Articles of Incorporation of the Corporation, as the same may be amended from time to time.

"Board" shall mean the Board of Directors of the Corporation.

"Common Stock" shall mean the Common Stock, no par value per share, of the Corporation.

"common stock" shall mean, collectively, the Common Stock, the Non-Voting Class B Common Stock and the Non-Voting Class C Common Stock.

"Convertible Preferred Stock" shall mean, collectively, the Series A-1 Preferred Stock and the Series A-2 Preferred Stock.

"Controllable Profit" shall have the meaning set forth in the Shareholders Agreement.

"Corporation" shall mean M2 Automotive, Inc., a California corporation.

"Distribution" shall mean all distributions made by the Corporation to holders of shares of capital stock in respect thereof, including common stock and Preferred Stock, whether in cash, property, or Securities of the Corporation and whether by dividend, distributions upon a liquidation, or otherwise; provided, however, that none of the following events shall be considered a Distribution: (i) any redemption or repurchase by the Corporation of shares of capital stock held by employees to the extent permitted by the terms of the Shareholders Agreement; (ii) stock dividends, stock splits, reverse stock splits or similar transactions; (iii) the redemption of the Corporation's Series B Preferred Stock in accordance with its terms; and (iv) the redemption of shares of Common Stock held by certain officers for an aggregate purchase price not to exceed \$450,000 in accordance with the terms of the Securities Purchase Agreement.

"Event of Default" shall have the meaning set forth in Section 4(c).

"Mandatory Redemption" shall have the meaning set forth in Section 5(a)(i).

"Mandatory Redemption Date" shall have the meaning set forth in Section 5(a)(iii).



"Maturity Date" shall have the meaning set forth in Section 5(a)(i)

"Non-Voting Class B Common Stock" shall mean the Non-Voting Class B Common Stock, no par value per share, of the Corporation.

"Non-Voting Class C Common Stock" shall mean the Non-Voting Class C Common Stock, no par value per share, of the Corporation.

"Notes" shall have the meaning set forth in Section 5(c)(iv).

"Optional Redemption" shall have the meaning set forth in Section 5(b)(i).

"Original Purchase Price" shall mean \$1,000 per share.

"Qualified IPO" shall mean an underwritten public offering of common stock by the Corporation based on a pre-offering equity valuation of the Corporation of not less than \$80,000,000 resulting in net proceeds to the Corporation of not less than \$25,000,000 and after which the common stock is admitted for quotation on the Nasdaq National Market (or any successor thereto) or listed for trading on a national securities exchange.

"Redemption Date" shall have the meaning set forth in Section 5(b)(iii).

"Redemption Price" shall have the meaning set forth in Section 5(a)(i).

"Securities Purchase Agreement" shall mean the Securities Purchase Agreement dated as of February 17, 1998, by and between the Corporation and Chase Venture Capital Associates, L.P.

"Senior Preferred Stock" shall have the meaning set forth in the first paragraph of this Certificate of Determination.

"Senior Preferred Warrants" shall mean the warrants to purchase Common Stock issued to each holder concurrently with the Senior Preferred Stock, and which are attached to shares of Senior Preferred Stock pro rata.

"Series A-1 Preferred Stock" shall mean the Series A-1 Senior Convertible Preferred Stock, no par value per share, of the Corporation.

"Series A-2 Preferred Stock" shall mean the Series A-2 Non-Voting Senior Convertible Preferred Stock, no par value per share, of the Corporation.

"Series B Preferred Stock" shall mean the Series B Non-Voting Senior Redeemable Preferred Stock, no par value per share, of the Corporation.

"Special Redemption" shall have the meaning set forth in Section 5(c)(i).

"Special Redemption Date" shall have the meaning set forth in Section 5(c)(i).

"Special Redemption Ratio" shall have the meaning set forth in Section 5(c)(iii).

"Shareholders Agreement" shall mean the Amended and Restated Shareholders Agreement dated as of February 17, 1998, by and among the Corporation and certain of its shareholders, as the same shall be modified and supplemented and in effect from time to time.

"Trigger Event" shall have the meaning set forth in the Shareholders Agreement.

Section 2. Dividends and Distributions.

a. The outstanding shares of Senior Preferred Stock shall accrue cumulatively on a daily basis a dividend at the rate of 10% per annum, computed on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days (including the first but excluding the last) occurring in the period for which such dividend is payable, compounded annually, on the Original Purchase Price per share, which dividend shall accrue and compound but not be payable until the first to occur of the (i) redemption of the related shares or (ii) the date of a liquidating distribution.

b. Subject to the prior rights of Series B Preferred Stock, including the right to be redeemed utilizing a portion of the proceeds received upon issuance of the Senior Preferred Stock, the holders of shares of Senior Preferred Stock shall be entitled to receive all Distributions until the holders of shares of Senior Preferred Stock shall have received (i) all accrued dividends and (ii) an amount equal to the Original Purchase Price per share.

c. After the Distributions described in clause (b) above have been made, the holders of shares of Senior Preferred Stock shall be entitled to receive Distributions ratably with holders of common stock and Convertible Preferred Stock, based on the number of shares of Common Stock into which the Senior Preferred Warrants attached thereto would then be exercisable as if exercisable on the date of Distribution. In no event shall such participating Distribution be payable if for any reason the Senior Preferred Warrants attached to such shares shall have been exercised or become exercisable.

No Distribution shall be paid to the holders of shares of Senior Preferred Stock pursuant to clause (a) or (b) above in any form of consideration other than cash unless the holders of a majority of the outstanding shares of Senior Preferred Stock at the time of the Distribution, voting separately as a class (with each such share entitling the holder thereof to one vote at all times) approve such Distribution (including the valuation of the consideration being distributed), and no Distribution shall be paid to any holder of shares of common stock pursuant to clause (c) above until the holders of shares of Senior Preferred Stock shall have received (either in cash or other

consideration, the form and value of which shall have been approved as provided above) all Distributions to which they are entitled pursuant to clause (b) above.

Section 3. Liquidation Rights of Senior Preferred Stock.

a. Preference. Subject to the prior rights of the Series B Preferred Stock, in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Senior Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, whether such assets are capital, surplus, or earnings, before any payment or declaration and setting apart for payment of any amount shall be made in respect of any other class or series of capital stock of the Corporation including, without limitation, the Convertible Preferred Stock, any class of common stock or any other class of preferred stock or common stock hereinafter established including, without limitation, any warrants, rights, calls or options exercisable for any such other class of preferred stock or common stock hereinafter established, an amount equal to the Original Purchase Price of the shares of Senior Preferred Stock, together with all accrued and unpaid dividends. The assets available for distribution shall be distributed to such holders *pro rata* in proportion to the number of shares of Senior Preferred Stock then held by each such holder.

b. Remaining Assets. After the payment or distribution to the holders of the Senior Preferred Stock and other series of preferred stock of the Corporation provided in (a) above, the holders of the Senior Preferred Stock shall be entitled to receive ratably with the holders of common stock then outstanding, based on the number of shares of common stock into which the Senior Preferred Warrants would then be exercisable as if exercisable on such date, all remaining assets of the Corporation to be distributed. In no event shall such participating Distribution be payable if for any reason the Senior Preferred Warrants attached to such shares shall have been exercised or become exercisable.

Section 4. Voting Rights.

a. The holders of record of shares of Senior Preferred Stock shall not be entitled to any voting rights except as hereinafter provided in this Section 4 or as otherwise required by law.

b. Subject to clause (c) below, at all times while the Senior Preferred Stock remains outstanding, the holders of Senior Preferred Stock, voting together as a single class, shall be entitled to elect two directors to serve on the Board at each meeting or consent for election of directors; provided, however, that in the event the number of shares of Senior Preferred Stock outstanding is reduced to 5,000 or less, the number of directors to be elected by the Senior Preferred Stock shall be reduced to one.

c. So long as any shares of the Senior Preferred Stock remain outstanding, in the event of (i) a failure to redeem shares of the Senior Preferred Stock as required pursuant to Section 5 hereof or to make any other payments to holders of Senior Preferred Stock

required hereby or (ii) in the event of the occurrence of a Trigger Event (each an "Event of Default"), then the holders of the Senior Preferred Stock shall (immediately upon the giving of written notice to the Corporation by the holders of a majority of the then outstanding shares of Senior Preferred Stock), voting together as a single class, be entitled to elect the smallest number of directors that shall constitute a majority of the authorized number of directors of the Corporation, and the holders of the other voting stock shall be entitled to elect the remaining members of the Board. If, after the election of a new Board pursuant to Section 4(d), the then existing Event of Default is cured, then the holders of the Senior Preferred Stock shall be divested of the special voting rights specified in this section. For purposes of this Section 4(c) an existing Event of Default will be deemed cured only: (x) in the event of a failure to redeem shares of Senior Preferred Stock as required pursuant to Section 5, or to make any other payments to holders of Senior Preferred Stock required hereby, at such time as such shares have been fully redeemed or such payments have been made in full; (y) in the event of a Trigger Event described in subsections (i) or (ii) of the definition of Trigger Event, one year following the date on which such event constituting a Trigger Event is cured, so long as that in such one-year period an event constituting a new Trigger Event does not occur; and (z) in the event of a Trigger Event described in subsection (iii) of the definition of Trigger Event, with respect to a failure to maintain Controllable Profit percentages, if the percentage is missed by less than 100 basis points, the then existing management provides to the reconstituted Board a recovery plan within 10 days of the election of the reconstituted Board, and within two quarters the Corporation is restored for one full quarter to the designated Controllable Profit percentage (it being the obligation of the reconstituted Board to maintain the Chief Executive Officer and any officers designated by him in his discretion in place during such period). In the event of a Trigger Event described in Subsection (iii) of the definition of Trigger Event, if the Controllable Profit percentage is missed by 100 basis points or greater, such Event of Default shall not be curable. The special voting rights of this section shall again accrue to the holders of the shares of the Senior Preferred Stock in case of any later occurrence of an Event of Default; *provided, however,* that if, within one year of the quarter (measured from the end of the quarter) in which the Controllable Profit Percentage is missed by less than 100 basis points, the designated Controllable Profit Percentage for an applicable quarter is missed again, then such second Trigger Event shall not be curable. Upon the termination of any such special voting rights as hereinabove provided, the Board shall promptly call a special meeting of the shareholders at which all directors will be elected, and the terms of office of all persons who are then directors of the Corporation shall terminate immediately upon the election of their successors.

d. Whenever under the provisions of Section 4(c) hereof, the right shall have accrued to the holders of the Senior Preferred Stock to vote as a single class to elect a majority of the Corporation's directors, the Board shall, within ten (10) days after delivery to the Corporation at its principal office of a request to such effect by the holders of a majority of the then outstanding shares of the Senior Preferred Stock, call a special meeting of shareholders for the election of directors, to be held upon not less than ten (10) nor more than twenty (20) days' notice to such holders. If such notice of meeting is not given within the ten (10) days required above, the holders of Senior Preferred Stock requesting such meeting may also call such meeting and for such purposes shall have access to the stock books and related records of the Corporation. At any meeting so called or at any other meeting held while the holders of shares of Senior Preferred Stock shall have

the voting power provided in Section 4(c), the holders of a majority of the shares of Senior Preferred Stock present in person or by proxy or voting by written consent, shall be sufficient to constitute a quorum for the election of directors as herein provided. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of Senior Preferred Stock pursuant to Section 4(c), the remaining directors so elected by that class may by affirmative vote of a majority thereof (or the remaining director so elected if there be but one) elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant, provided that if there are no remaining directors so elected by that class, the vacancies may be filled by the vote of the holders of the shares of Senior Preferred Stock, voting together as a single class, given either at a special meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders. Any directors who shall have been elected by the holders of Senior Preferred 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 with or without cause, by, and only by, the vote of the holders of the shares of the Senior Preferred Stock who elected such director or directors, given either at a special meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders, and any vacancy created may be filled by the holders of Senior Preferred Stock represented at such meeting or pursuant to such written consent.

e. Without the written consent of holders of a majority of the outstanding shares of Senior Preferred Stock or the vote of holders of a majority of the outstanding shares of Senior Preferred Stock at a meeting of the holders of Senior Preferred Stock called for such purpose, the Corporation will not (i) liquidate, dissolve, wind-up or otherwise discontinue the business of the Corporation (otherwise then in connection with an Approved Sale as such term is defined in the Shareholders Agreement); (ii) amend, alter or repeal any provision of the Articles of Incorporation (by merger or otherwise) so as to adversely affect the preferences, rights or powers of the Senior Preferred Stock (provided that any such amendment that changes the dividend payable on, or the Redemption Price (or method of calculation thereof) of, the Senior Preferred Stock shall require the affirmative vote of holders of each share of Senior Preferred Stock at a meeting of holders of Senior Preferred Stock called for such purpose or written consent of the holder of each share of Senior Preferred Stock); (iii) create, authorize or issue any class of stock ranking prior to, or on a parity with, the Senior Preferred Stock with respect to dividends or upon liquidation, dissolution, winding up or otherwise, or increase the authorized number of shares of any such class or series, or reclassify any authorized stock of the Corporation into any such prior or parity shares or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such prior or parity shares or alter, amend or repeal any of the terms of any of the foregoing, except that the Corporation may, without such approval, create authorize and issue such prior or parity securities for the purpose of utilizing the proceeds from the issuance of such securities for the redemption or repurchase of all shares of Senior Preferred Stock in accordance with the terms hereof (it being understood that this clause (iii) relates only to the seniority of the Senior Preferred Stock with respect to return of the Original Purchase Price and payment of dividends and not to the right to participate in earnings and profits ratably with common stock pursuant to clauses 2(c) or 3(b) hereof).

f. In exercising the voting rights set forth in this Section 4, each share of Senior Preferred Stock shall have one vote per share.

Section 5. Redemption.

a. Mandatory Redemption.

i. Subject to the provisions of Section 6, the Senior Preferred Stock is subject to mandatory redemption ("Mandatory Redemption") on the first to occur of (A) February 1, 2005 (the "Maturity Date") and (B) the date of the closing of a Qualified IPO, in either case at a price per share equal to 100% of the Original Purchase Price per share plus accrued and unpaid dividends to the date of redemption (the "Redemption Price").

ii. Subject to the provisions of Section 6, upon the occurrence of a Mandatory Redemption all outstanding shares of Senior Preferred Stock shall be redeemed simultaneously.

iii. In the event that a Mandatory Redemption is required by a Qualified IPO, a notice of such Mandatory Redemption shall be sent by or on behalf of the Corporation not more than 20 days prior to the anticipated closing of the Qualified IPO, by first class mail, postage prepaid, to all holders of record of the Senior Preferred Stock at their last addresses as they shall appear on the books of the Corporation; *provided, however*, that no failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of the Senior Preferred Stock except as to the holder to whom the Corporation has failed to give notice or except as to the holder to whom notice was defective. The notice shall specify the date for redemption (the "Mandatory Redemption Date"), which date shall be not more than 3 days after the closing of the Qualified IPO (which may be stated by reference to the actual closing of the Qualified IPO). In addition to any information required by law or by the applicable rules of any exchange upon which Senior Preferred Stock may be listed or admitted to trading, such notice shall state: (A) the estimated Mandatory Redemption Date; (B) the estimated Redemption Price; (C) the number of shares of Series B Preferred Stock to be redeemed; (D) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price, including any procedures applicable to redemptions to be accomplished through book-entry transfers, and (E) the date on which the Senior Preferred Stock shall cease to accrue dividends. The notice of redemption may be conditioned on the closing of the Qualified IPO.

iv. Provided that on or before such date payment is made or irrevocably deposited in trust as provided herein, from and after the Mandatory Redemption Date dividends on the Senior Preferred Stock shall cease to accrue and said shares shall no longer be deemed to be outstanding and shall not have the status of shares of Senior Preferred Stock, and all rights of the holders thereof as shareholders of the Corporation (except the right to receive from the Corporation the Redemption Price) shall cease. Upon surrender of the certificates representing the shares of Senior Preferred Stock (properly endorsed or assigned for transfer, if the Corporation shall

so require and any related notice shall so state), such shares shall be redeemed by the Corporation at the Redemption Price, payable in cash.

b. Redemption at the Option of the Corporation.

i. On or after the date hereof, the Senior Preferred Stock may be redeemed, in whole or in part, at the option of the Corporation ("Optional Redemption"), at the Redemption Price.

ii. In case of an Optional Redemption of less than all of the shares of Senior Preferred Stock at the time outstanding, the shares to be redeemed shall be selected *pro rata* from the holders.

iii. Notice of any Optional Redemption shall be sent by or on behalf of the Corporation not less than 10 nor more than 60 days prior to the date specified for redemption in such notice (the "Redemption Date"), by first class mail, postage prepaid, to all holders of record of the Senior Preferred Stock at their last addresses as they shall appear on the books of the Corporation; *provided, however*, that no failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Senior Preferred Stock except as to the holder to whom the Corporation has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Senior Preferred Stock may be listed or admitted to trading, such notice shall state: (A) the Redemption Date; (B) the Redemption Price; (C) the number of shares of Senior Preferred Stock to be redeemed and, if less than all shares held by such holder are to be redeemed, the number of such shares to be redeemed; (D) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price, including any procedures applicable to redemptions to be accomplished through book-entry transfers; and (E) that the Senior Preferred Stock shall cease to accrue dividends on the Redemption Date. Upon the mailing of any such notice of redemption, the Corporation shall become obligated to redeem at the time of redemption specified thereon all shares called for redemption; *provided, however*, that such notice of redemption and related Redemption Date may be conditioned on the occurrence of a specified event (*e.g.*, a financing transaction) that the Corporation reasonably expects to occur not more than thirty (30) days after the related notice.

iv. If notice has been mailed in accordance with clause (iii) above and provided that on or before the Redemption Date specified in such notice, all funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds in trust for the *pro rata* benefit of the holders of the shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Redemption Date, the Senior Preferred Stock so called from redemption shall cease to accrue dividends and said shares shall no longer be deemed to be outstanding and shall not have the status of shares of Senior Preferred Stock, and all rights of the holders thereof as shareholders of the Corporation (except the right to receive from the Corporation the Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the

Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the Redemption Price. In case fewer than all the shares represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares without cost to the holder thereof.

c. Special Redemption.

i. Subject to the provisions of this Section 5(c) and in compliance with Section 402(a) and (d) of the California Corporations Code and with all applicable laws, in the event that the Corporation elects to pursue a Qualified IPO and the managing underwriter of the Qualified IPO determines that the Qualified IPO cannot be consummated if all or some portion of the Senior Preferred Stock is redeemed with the cash proceeds of the Qualified IPO, the Corporation shall have the right and obligation to redeem in consideration of the issuance of Notes, and the holders of Senior Preferred Stock shall have the obligation to tender for redemption in consideration of the issuance of Notes, that portion of the Senior Preferred Stock which cannot be so redeemed for cash (the "Special Redemption"), provided, that on or prior to the date of the Special Redemption ("Special Redemption Date") the Corporation shall have paid to, or declared and set aside for payment to, the holders of outstanding shares of Senior Preferred Stock cash representing all accrued and unpaid cash dividends on shares of Senior Preferred Stock through the Special Redemption Date, or issued Notes therefor, in accordance with the next succeeding paragraph. The principal amount of Notes deliverable upon Special Redemption of a share of Senior Preferred Stock, adjusted as hereinafter provided, shall be determined in accordance with the Special Redemption Ratio (as defined below).

ii. Cash dividends on any shares of Senior Preferred Stock specially redeemed for Notes which have accrued but have not been paid as of the date of Special Redemption shall be paid, at the option of the Corporation, in cash or in additional Notes in an equivalent principal amount of such accrued and unpaid dividends. In no event shall the Corporation issue Notes in denominations other than \$1,000 or in an integral multiple thereof. Cash will be paid in lieu of any such fraction of a Note which would otherwise have been issued (which shall be determined with respect to the aggregate principal amount of Notes to be issued to a holder upon any such Special Redemption). Interest will accrue on the Notes from the date of Special Redemption.

iii. The "Special Redemption Ratio" shall be, as of any Special Redemption Date, \$1.00 (or fraction thereof) of principal amount of Notes for each \$1.00 of (i) Original Purchase Price plus (ii) accrued and unpaid cash dividends, if any, per share of Senior Preferred Stock held by a holder on the applicable Special Redemption Date.

iv. "Notes" means 12% Junior Subordinated Notes of the Corporation, substantially in the form of Exhibit A-2 to the Securities Purchase Agreement.



v. Procedure for Special Redemption. Notice of any Special Redemption shall be given by first class mail, postage prepaid, mailed not less than 10 days nor more than 60 days prior to the date fixed for Special Redemption, to each holder of record of the Senior Preferred Stock at such holder's address as the same appears on the stock register of the Corporation; *provided*, that neither the failure to give such notice nor any defect therein shall affect the validity of the giving of notice for the Special Redemption of any share of Senior Preferred Stock to be subject to Special Redemption, except as to the holder to whom the Corporation has failed to give said notice or whose notice was defective. Each such notice shall state: (A) the estimated Special Redemption Date; (B) the number of shares of Senior Preferred Stock to be subject to Special Redemption; (C) the Special Redemption Ratio (based on the estimated Special Redemption Date); (D) the place or places where certificates for such shares are to be redeemed for Notes; and (E) that dividends on the shares to be subject to Special Redemption will cease to accrue on such Special Redemption Date, and shall be accompanied by a written notice from the managing underwriters setting forth the managing underwriters' determination that, in the opinion of such managing underwriter, such Special Redemption is necessary in order to consummate the Qualified IPO. Notice having been mailed as aforesaid, from and after the Special Redemption Date (unless default shall be made by the Corporation in issuing Notes in Special Redemption for the shares called for Special Redemption), dividends on the shares of Senior Preferred Stock so called for Special Redemption shall cease to accrue, and all rights of the holders thereof as shareholders of the Corporation (except the right to receive from the Corporation the Notes and any rights such holder, upon the Special Redemption, may have as a holder of the Notes) shall cease. Upon surrender in accordance with said notice of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the Board shall so require and the notice shall so state), such share shall be redeemed for Notes issued at the Special Redemption Ratio. Each Special Redemption shall be deemed to have been effected immediately prior to the close of business on the Special Redemption Date, and the person in whose name or names any notes evidencing the Notes shall be issuable upon such Special Redemption shall be deemed to have become the holder of record of the Notes represented thereby at such time on such date. Prior to the delivery of any securities which the Corporation shall be obligated to deliver upon Special Redemption of the Senior Preferred Stock, the Corporation shall comply with all applicable federal and state laws and regulations which require action to be taken by the Corporation and the holders of Senior Preferred Stock shall provide customary representations with respect to applicable federal and state securities laws and regulations as reasonably requested by the Corporation.

vi. The Corporation will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of certificates evidencing Notes on Special Redemption of the Senior Preferred Stock pursuant hereto; *provided*, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of certificates evidencing Notes in a name other than that of the holder of the Senior Preferred Stock to be redeemed and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

d. Funds Deposited in Trust. Any funds deposited with a bank or trust company for the purpose of redeeming Senior Preferred Stock shall be irrevocable except that:

i. the Corporation shall be entitled to receive from such bank or trust company the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

ii. any balance of monies so deposited by the Corporation and unclaimed by the holders of the Senior Preferred Stock entitled thereto at the expiration of two years from the applicable Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

e. Funds Legally Available. No Senior Preferred Stock may be redeemed nor any Distribution paid in respect thereof except with funds legally available for the purpose. The Corporation shall use all reasonable commercial efforts to take all actions required or permitted under the California Corporations Code to permit any such redemption.

f. Redeemed Shares. All shares of Senior Preferred Stock redeemed pursuant to this Section 5 shall be restored to the status of authorized and unissued shares of preferred stock, without designation as to series, and may thereafter be reissued as shares of any series of preferred stock other than shares of Senior Preferred Stock.

Section 6. Certain Limitations. The Board and shareholders of the Corporation shall have no authority to designate in the future any class or series of preferred stock with rights, preferences, privileges and restrictions superior to, or on parity with, the Senior Preferred Stock designated hereinabove with respect to participation in the assets of the Corporation upon liquidation and with respect to distributions (it being understood that this Section 6 relates only to the seniority of the Senior Preferred Stock with respect to the return of the Original Purchase Price and payment of dividends and not to the right to participate in earnings and profits ratably with common stock pursuant to clauses 2(c) and 3(b) hereof), unless and until (i) 100% of the shares of the Senior Preferred Stock have been redeemed by the Corporation as provided herein or (ii) holders of a majority of the outstanding shares of Senior Preferred Stock shall have consented to such action in writing.

\* \* \* \*

1730503

ARTICLES OF INCORPORATION  
OF

MACKIE ENTERPRISES, INC.

NAME

FIRST: The name of the corporation is:  
MACKIE ENTERPRISES, INC.

FILED  
In the office of the Secretary of State  
of the State of California

AUG 26 1993

*March Fong Eu*  
MARCH FONG EU, Secretary of State

PURPOSE AND POWERS

SECOND: The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporations Law of California other than the Banking Business, the Trust Company Business or the practice of a profession permitted to be incorporated under the California Corporations Code.

SERVICE OF PROCESS

THIRD: The name and address in the State of California of the initial agent for service of process on the corporation is:

BRUCE MACKIE  
1211 North Batavia  
Orange, CA 92667

STOCK

FOURTH: This corporation is authorized to issue only one class of share of stock having a total number of 10,000 shares.

NUMBER OF DIRECTORS

FIFTH: The authorized number of directors of this corporation shall be three (3).

IN WITNESS WHEREOF, the undersigned incorporator of this corporation has executed this Articles of Incorporation for the purpose of forming a corporation pursuant to the General Corporations Law of California on the 23 day of August, 1993.

*Bruce Mackie*  
\_\_\_\_\_  
BRUCE MACKIE

The undersigned incorporator hereby declares and certifies that he is the person who executed the foregoing Articles of Incorporation, which execution is his act and deed.

*Bruce Mackie*  
\_\_\_\_\_  
BRUCE MACKIE

TRADEMARK