

MD 8-28-98

1-31-92

08-31-1998

1 SHEET  
NLY

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office



100810063

Tab settings

To the Honorable Commissioner of

is attached original documents or copy thereof.

1. Name of conveying party(ies):

ICON Medical Systems, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: June 12, 1995

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

Name: Cemax, Inc.

Internal Address:

Street Address: 1705 Wyatt Drive

City: Santa Clara State: CA ZIP: 95054

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

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

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached?  Yes  No

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

A. Trademark Application No.(s)

B. Trademark registration No.(s)

1,960,029  
1,961,719  
1,984,810  
1,944,148

Additional numbers attached?  Yes  No

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

Name: Keith E. Sharkin, Esq.

Internal Address: Nims, Howes, Collison, Hansen & Lackert

Street Address: 605 Third Avenue

Suite 3500

City: New York State: NY ZIP: 10158

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41): \$ 115.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

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

08/31/1998 BCDATES 00000032 1960029

DO NOT USE THIS SPACE

01 FC:481  
02 FC:482

40.00 DP  
75.00 DP

9. Statement and signature.

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

Keith E. Sharkin

Name of Person Signing

Signature

August 27, 1998

Date

Total number of pages comprising cover sheet: 1

CMB No. 0651-0011 (exp. 4/94)

TRADEMARK

Do not detach this portion

REEL: T773 FRAME: 0412

A462391

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

1264495 SURV

JUN 13 1995

AGREEMENT AND PLAN OF MERGER

*Bill Jones*  
Secretary of State

THIS AGREEMENT AND PLAN OF MERGER, dated as of June 12, 1995 is by and between Cemax, Inc., a California corporation ("Cemax") and ICON Medical Systems, Inc., a California corporation ("ICON"). Cemax and ICON are hereinafter collectively referred to as the "Constituent Corporations".

This Agreement and Plan of Merger ("Merger Agreement") is being entered into pursuant to an Agreement and Plan of Reorganization, dated as of April 12, 1995, between Cemax and ICON (the "Reorganization Agreement").

Accordingly, in consideration of the premises, and the mutual covenants and agreements contained herein and in the Reorganization Agreement, the parties hereto hereby agree, subject to the terms and conditions hereinafter set forth and as set forth in the Reorganization Agreement, as follows:

ARTICLE I

THE MERGER

1.1 Merger; Effective Date of Merger. Subject to the terms and conditions of this Merger Agreement and of the Reorganization Agreement, ICON will be merged with and into Cemax (the "Merger") in accordance with the California General Corporation Law, with Cemax being the surviving corporation (the "Surviving Corporation") in such merger and ICON being assumed in such merger (the "Merged Corporation"). In accordance with the provisions of this Merger Agreement, the Reorganization Agreement, and together with required officer certificates, the Merger Agreement shall be filed in accordance with the California General Corporation Law. The Merger shall become effective upon such filing of the Merger Agreement and officer's certificate of each of the Constituent Corporations with the Secretary of State of California pursuant to Section 1103 of the California General Corporation Law (the date of such filing being hereinafter referred to as the "Effective Date of the Merger").

1.2 Effect of the Merger. The Merger shall have the effects set forth in Section 1107 of the California General Corporation Law. At the Effective Date of the Merger, (i) the separate existence of the Merged Corporation shall cease and the Merged Corporation shall be merged with and into the Surviving Corporation and (ii) the Surviving Corporation shall succeed, without other transfer, to all the rights and property of the Merged Corporation and shall be subject to all the debts and liabilities of the Merged Corporation in the same manner as if the Surviving Corporation had itself incurred them.

1.3 Additional Actions. If, at any time after the Effective Date of the Merger, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to (i) vest, perfect or confirm of record or otherwise in the Surviving Corporation its rights, title or interest in, to or under any of the rights, properties or assets of the Merged Corporation acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or (ii) to otherwise carry out this Merger Agreement, the Merged

Corporation and its officers and directors shall be deemed to have granted to the Surviving Corporation an irrevocable power of attorney to execute and deliver all such deeds, bills of sale, assignments and assurances and to take and do all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise carry out this Merger Agreement and to take any and all such actions.

## ARTICLE II

### THE CONSTITUENT CORPORATIONS

#### 2.1 Organization of Cemax.

(a) Incorporation. Cemax was incorporated under the laws of the State of California on March 9, 1982.

(b) Authorized Stock. Cemax is authorized to issue an aggregate of fifty million (50,000,000) shares of Common Stock, and thirty million (30,000,000) shares of Preferred Stock, of which six million (6,000,000) shares are designated Series A Preferred Stock; and three million (3,000,000) shares are designated Series B Preferred Stock; three million (3,000,000) shares are designated Series C Preferred Stock; and six hundred thousand (600,000) shares are designated Series D Preferred Stock. Cemax has reserved 1,825,000 shares of Common Stock pursuant to its 1986 Amended Incentive Stock Plan.

(c) Outstanding Stock. At the close of business April 12, 1995, one million, five hundred eighty-two thousand, five hundred and seventy-five (1,582,575) shares of Cemax Common Stock were issued and outstanding; five million, four hundred seventy-seven thousand, four hundred (5,477,400) shares of Series A Preferred Stock were issued and outstanding and are convertible into 54,774 shares of Common Stock; two million, seven hundred twenty-three thousand, six hundred seventy-seven (2,723,677) shares of Series B Preferred Stock were issued and outstanding; two million, one hundred forty-three thousand, three hundred eighty-three (2,143,383) shares of Series C Preferred Stock were issued and outstanding; and five hundred thousand and forty-seven (500,047) shares of Series D Preferred Stock were issued and outstanding. Cemax has reserved 1,825,000 shares of Common Stock pursuant to its 1986 Amended Incentive Stock Plan. Options to purchase 1,115,738 shares of Common Stock are outstanding.

#### 2.2 Organization of ICON.

(a) Incorporation. ICON was incorporated under the laws of the State of California on November 17, 1989.

(b) Authorized Stock. ICON is authorized to issue an aggregate of fifty million (50,000,000) shares of Common Stock ("ICON Common Stock"). ICON has reserved 3,292,680 shares of ICON Common Stock pursuant to its 1992 Stock Plan.

(c) Outstanding Stock. At the close of business on April 12, 1995, 16,164,566 shares of ICON Common Stock were issued and outstanding. Options to purchase 2,780,262 shares of ICON Common Stock are outstanding.

### ARTICLE III

#### ARTICLES OF INCORPORATION OF THE SURVIVING CORPORATION

##### 3.1 Amendment of Surviving Corporation's Articles of Incorporation.

(a) Articles of Surviving Corporation. The Articles of Incorporation of the Surviving Corporation shall be amended in full as set forth in Exhibit A.

### ARTICLE IV

#### CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES

4.1 Effect on Capital Stock. As of the Effective Date of the Merger, by virtue of the Merger and without any action on the part of the holder of any shares of capital stock of the Surviving Corporation:

(a) Capital Stock of the Surviving Corporation. Each issued and outstanding share of Preferred Stock of the Surviving Corporation shall be converted into shares of Common Stock of the Surviving Corporation based upon the number of shares of Common Stock into which such share of Preferred Stock is convertible as of the Effective Date of the Merger. The ratio pursuant to which each outstanding share of Preferred Stock of the Surviving Corporation will be converted into Common Stock as set forth above is hereinafter referred to as the "Conversion Ratio." The issued and outstanding Common Stock of the Surviving Corporation will remain outstanding.

##### (b) Conversion of Capital Stock of the Merged Corporation.

(i) Except for Dissenting Shares and fractional shares which are provided for in Subsections 4.1(e) and 4.1(f) hereof, each issued and outstanding share of Common Stock of the Merged Corporation shall be converted and exchanged, without any action on the part of the holder thereof, into 0.273191 shares of Common Stock of the Surviving Corporation.

(ii) The shares of Common Stock of the Surviving Corporation to be issued upon conversion of the capital stock of the Merged Corporation are sometimes referred to herein as the "Merger Shares." The ratio pursuant to which each outstanding share of the Common Stock of the Merged Corporation will be exchanged for shares of Common Stock of the Surviving Corporation as set forth above is hereinafter referred to as the "Exchange Ratio."

(c) Treatment of Outstanding Options and Warrants.

(i) Each issued and outstanding option or warrant exercisable for shares of Common Stock of the Surviving Corporation shall continue to be outstanding after the Effective Date of the Merger.

(ii) Each issued and outstanding option or warrant exercisable for shares of Common Stock of the Merged Corporation shall be converted, and exchanged, without any action on the part of the holder thereof, into an option or warrant, as the case may be, exercisable for the number of shares of Common Stock of the Surviving Corporation equal to the number of shares of Common Stock for which such option or warrant was previously exercisable multiplied by the Exchange Ratio at an exercise price per share equal to the existing per share exercise price divided by the Exchange Ratio.

(d) Adjustment of Exchange Ratio and Conversion Ratio. If, between the date of this Agreement and the Effective Date of the Merger, the outstanding shares of Common Stock of the Merged Corporation or the Surviving Corporation shall have been changed into a different number of shares or a different class, the Exchange Ratio and/or the Conversion Ratio shall be correspondingly adjusted.

(e) Dissenters' Rights If holders of Common Stock of the Merged Corporation are entitled to dissenters' rights at the Effective Date of the Merger under Section 1300 et seq. of the California General Corporation Law, the shares as to which dissenters' rights are available ("Dissenting Shares") shall not be converted into Common Stock of the Surviving Corporation on or after the Effective Date of the Merger, but shall instead be converted into the right to receive from the Surviving Corporation such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to the General Corporation Law of the State of California. The Surviving Corporation shall give the Merged Corporation prompt notice of any demand received by the Surviving Corporation for appraisal of Common Stock of the Merged Corporation, and the Merged Corporation shall have the right to participate in all negotiations and proceedings with respect to such demand. The Surviving Corporation agrees that, except with the prior written consent of the Merged Corporation, or as required under the California General Corporation Law, it will not voluntarily make any payment with respect to, or settle or offer to settle, any such demand for appraisal. Each holder of Dissenting Shares (a "Dissenting Shareholder") who, pursuant to the provisions of Section 1300 et seq. of the California General Corporation Law, becomes entitled to payment of the value of shares of the Common Stock of the Merged Corporation shall receive payment therefor (but only after the value therefor shall have been agreed upon or finally determined pursuant to such provisions). In the event of the legal obligation, after the Effective Date of the Merger, to deliver Merger Shares to any Dissenting Shareholder who shall have failed to make an effective demand for appraisal or shall have lost his status as a Dissenting Shareholder, the Surviving Corporation shall issue and deliver, upon surrender by such Dissenting Shareholder of his certificate or certificates representing shares of the Common Stock of the Merged Corporation, the shares of Common Stock of the Surviving Corporation to which such Dissenting Shareholder is then entitled under this Section 4.1, the Merger Agreement and Section 1300 et seq. of the California General Corporation Law.

(f) Fractional Shares. No fractional shares of Common Stock of the Surviving

Corporation shall be issued in the Merger, with any fractional shares resulting from the Exchange Ratio being rounded up or down to the nearest whole share.

(g) Intention of the Parties. It is contemplated that the shareholders and option and warrant holders of ICON will hold approximately thirty-nine percent (39%) and the shareholders and option and warrant holders of Cemax will hold approximately sixty-one percent (61%) of the fully-diluted capital stock of the Surviving Corporation following the Merger. It is anticipated that concurrently with the Closing of the Merger the Surviving Corporation will adopt a new stock option plan covering 625,500 shares of Common Stock.

#### 4.2 Exchange of Certificates.

(a) The Surviving Corporation to Provide Common Stock. Promptly after the Effective Date of the Merger (but in no event later than ten business days thereafter), the Surviving Corporation shall make available for exchange in accordance with this Article IV and the Merger Agreement, through such reasonable procedures as the Surviving Corporation may adopt, the shares of Common Stock of the Surviving Corporation issuable pursuant to Section 4.1 and the Merger Agreement in exchange for outstanding shares of capital stock of the Merged Corporation.

(b) Exchange Procedures. Within 12 days after the Effective Date of the Merger, the Surviving Corporation shall mail to each holder of record of a certificate or certificates which immediately prior to the Effective Date of the Merger represented outstanding shares of Common Stock of the Merged Corporation (the "Certificates") whose shares are being converted into Common Stock of the Surviving Corporation pursuant to Section 4.1 hereof and the Merger Agreement, (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Surviving Corporation and which shall be in such form and have such other provisions as the Surviving Corporation may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for Common Stock of the Surviving Corporation. Upon surrender of a Certificate for cancellation to the Surviving Corporation or to such other agent or agents as may be appointed by the Surviving Corporation, together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor the number of shares of Common Stock of the Surviving Corporation to which the holder of Common Stock of the Merged Corporation is entitled pursuant to Section 4.1 hereof. The Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of Common Stock of the Merged Corporation which is not registered on the transfer records of the Surviving Corporation, the appropriate number of shares of Common Stock of the Surviving Corporation may be delivered to a transferee if the Certificate representing such Common Stock of the Merged Corporation is presented to the Surviving Corporation and accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer taxes have been paid. From and after the Effective Date of the Merger, until surrendered as contemplated by this Section 4.2, subject to the provisions of Section 4.1(e), each Certificate shall be deemed for all corporate purposes to evidence the number of shares of Common Stock of the Surviving Corporation into which the shares of capital stock of the Merged Corporation represented by such Certificate have been converted.

(c) No Further Ownership Rights in Capital Stock of the Merged Corporation. All Common Stock of the Surviving Corporation delivered upon the surrender for exchange of shares of Common Stock of the Merged Corporation in accordance with the terms hereof shall be deemed to have been delivered in full satisfaction of all rights pertaining to such shares of Common Stock of the Merged Corporation.

## ARTICLE V

### AMENDMENT AND TERMINATION

5.1 Termination. Notwithstanding the approval and adoption of this Merger Agreement by the shareholders of Ceinax and ICON, this Merger Agreement shall terminate forthwith in the event that the Reorganization Agreement shall be terminated as therein provided. In the event of the termination of this Merger Agreement as provided above, this Merger Agreement shall forthwith become void and there shall be no liability on the part of the parties hereto except as otherwise provided in the Reorganization Agreement.

5.2 Amendment. This Merger Agreement shall not be amended except by an instrument in writing signed on behalf of each of the parties hereto pursuant to an amendment to the Reorganization Agreement approved in the manner therein provided. If any such amendment to the Reorganization Agreement is so approved, any amendment to this Merger Agreement required by such amendment to the Reorganization Agreement shall be effected by the parties hereto by action taken by their respective Boards of Directors and, if required, by the shareholders.

## ARTICLE VI

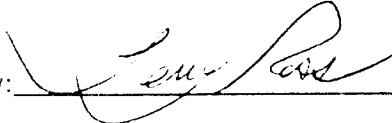
### MISCELLANEOUS

6.1 Multiple Counterparts. This Merger Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to each of the other parties.


6.2 Choice of Law. This Merger Agreement shall be governed by and construed, in accordance with the laws of the State of California without reference to choice of law provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

CEMAX, INC.

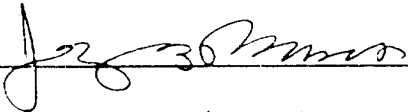
By: 

Title: President

By: 

Title: Asst. Secretary

ICON MEDICAL SYSTEMS, INC.

By: 

Title: Director / CEO



EXHIBIT A  
RESTATED ARTICLES OF INCORPORATION  
OF  
CEMAX, INC.

I

The name of this corporation is CEMAX, INC.

II

The purpose of this 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.

III

The corporation is authorized to issue two classes of shares to be designated respectively "preferred" and "common." The total number of shares which the corporation is authorized to issue is 80,000,000 shares. The number of preferred shares authorized is 30,000,000 shares (the "Preferred Stock"). The number of common shares authorized is 50,000,000 shares (the "Common Stock").

The Preferred Stock authorized by these Articles of Incorporation may be issued from time to time in one or more series. Except as set forth in Article IV hereof relating to the Series A Preferred Stock, the Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them.

The Board of Directors is further authorized to increase or decrease the number of shares of any series, the number of which was fixed by it, subsequent to the issue of shares of such series, and, subject to the limitations and restrictions stated in the resolution of the Board of Directors originally fixing the number of shares of such series. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

#### IV

Section 1. Designation Series A Preferred. One million, nine hundred and ninety-five thousand, eight hundred and seventy-eight (1,985,878) shares of Preferred Stock are designated "Series A Preferred Stock" (hereinafter referred to as the "Series A Preferred") with the rights, preferences and privileges specified herein.

Section 2. Dividend Provisions. The holders of shares of Series A Preferred shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock of this corporation) solely on the Common Stock of this corporation. Dividends shall be at the rate of \$.32 per annum for each share of Series A Preferred whenever funds are legally available therefor, payable when, as, and if declared by the Board of Directors, which amounts shall be subject to equitable adjustment in the event of stock splits, stock dividends, combinations, reclassifications, or other similar events involving the Series A Preferred. Dividends on the Series A Preferred shall be noncumulative, and no right shall accrue to the holders of the Series A Preferred by reason of the fact that dividends on said shares are not declared in any prior period.

Section 3. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, the entire assets and funds of the corporation legally available for distribution (the "Funds") shall be distributed first ratably among the holders of the Series A Preferred in an amount per outstanding share of Series A Preferred equal to the sum of \$4.00 plus all declared but unpaid dividends with respect to such share. If the entire assets and funds of the corporation shall be insufficient to pay the aforesaid preferential amounts in full, such assets and funds as are available shall be distributed to the holders of Series A Preferred in proportion to the full amount to which each such holder is entitled as set forth above. After full payment of the aforesaid preferential amounts, all remaining funds and assets shall be distributed ratably per share to the holders of all of the outstanding shares Common Stock. All of the foregoing amounts shall be subject to equitable adjustment in the event of stock splits, stock dividends, combinations, reclassifications, or other similar events involving the Series A Preferred or Common Stock.

(b) A consolidation or merger of this corporation with or into any other corporation or corporations, a sale of all or substantially all of the assets of the corporation, and the sale to a single entity or group of entities under common control of capital stock possessing more than 50% of the voting power of this corporation shall each be deemed to be a liquidation, dissolution or winding up within the meaning of this Section 3.

(c) Each holder of an outstanding share of Series A Preferred shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the General Corporation Law of California, to distributions made by the corporation in connection with the repurchase of

shares of Common Stock issued to or held by employees or consultants upon termination of their employment or consulting relationship pursuant to agreements providing for the right of said repurchase between the corporation and such persons.

Section 4. Redemption.

(a) At any time after January 1, 2000, this corporation may, at the option of the Board of Directors and upon satisfaction of the terms and conditions as stated herein, from any source of funds legally available therefor, redeem in whole or in part the outstanding shares of Series A Preferred by paying in cash therefor a sum equal to \$4.00 per share of Series A Preferred plus any declared and unpaid dividends on such shares to be redeemed. The term "Redemption Price" as used in this Section 4 refers to the respective amounts to be paid to redeem the Series A Preferred.

(b) In the event of the redemption of only a part of the then outstanding Series A Preferred, this corporation shall effect such redemption pro rata according to the number of shares held by each holder thereof.

(c) At least thirty (30) but no more than sixty (60) days prior to the Redemption Date (defined below), written notice shall be mailed (the "Redemption Notice"), postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Series A Preferred to be redeemed, at the address last shown on the records of this corporation for such holder or given by the holder to this corporation for the purpose of notice or, if no such address appears or is given, at the place where the principal executive office of this corporation is located, notifying such holder of the redemption of such shares, specifying the effective date of redemption (the "Redemption Date"), the Redemption Price, the place at which payment may be obtained, the date on which such holder's Conversion Rights (as hereinafter defined) as to such shares terminate and calling upon such holder to surrender to this corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed. On or after the Redemption Date, each holder of Series A Preferred to be redeemed shall surrender to this corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(d) From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of the shares of Series A Preferred designated for redemption in the redemption notice as holders of Series A Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares

shall not thereafter be transferred on the books of this corporation or be deemed to be outstanding for any purpose whatsoever. The shares of Series A Preferred not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein.

(e) If, on or prior to the Redemption Date, this corporation deposits the total Redemption Price of all outstanding shares of Series A Preferred subject to redemption pursuant to a Redemption Notice in trust for the benefit of the respective holders of such shares, then, from and after the date of the deposit (although prior to the Redemption Date), the shares so called shall be deemed redeemed and dividends on those shares shall cease to accrue after the Redemption Date. Such deposit shall be made with a bank or trust company in California with irrevocable instructions and authority to such bank or trust company to pay, on and after the Redemption Date, the Redemption Price of the Series A Preferred to their respective holders upon surrender of their certificates which shall constitute full payment of the shares and, from and after the date of deposit, the shares shall no longer be outstanding and the holders thereof shall cease to be shareholders with respect to such shares, and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the Redemption Price of the shares without interest, upon the surrender of their certificates, therefor. Any monies deposited by this corporation pursuant to this paragraph for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 5 no later than the fifth day preceding the Redemption Date shall be returned to this corporation forthwith upon such conversion. The balance of any monies deposited by this corporation pursuant to this paragraph remaining unclaimed at the expiration of one (1) year following the Redemption Date shall thereafter be returned to this corporation upon its request expressed in a resolution of its Board of Directors, after which time the holders of shares called for redemption shall be entitled to receive payment of the Redemption Price (without interest) only from the corporation.

— Section 5. Conversion. The holders of the Series A Preferred shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert.

(i) Subject to subparagraph (c) of this Section 5 and at the option of each holder of Series A Preferred, at any time after the date of issuance of the Series A Preferred and prior to the close of business on the fifth day prior to any Redemption Date, at the office of this corporation or any transfer agent for such series of Preferred Stock, each share of Series A Preferred shall be initially convertible into one (1) fully paid and non-assessable share of Common Stock, with the number of shares of Common Stock into which each share of such series of Preferred Stock is convertible being referred to herein as the "Conversion Rate."

(ii) In the event of a call for redemption of any shares of Series A Preferred pursuant to Section 4 hereof, the Conversion Rights as to the shares designated for redemption shall terminate at the close of business on the fifth day

preceding the Redemption Date, unless default is made in payment of the Redemption Price.

(iii) Each share of Series A Preferred shall automatically be converted (without any action on the part of the holder thereof) into shares of Common Stock using the then effective Conversion Rate with respect to such series of Preferred Stock immediately upon the closing of a firm commitment underwritten public offering of the shares pursuant to an effective registration statement under the Securities Act of 1933, as amended (other than a registration statement relating solely to the sale of securities to employees of the corporation or a registration relating to a Securities and Exchange Commission Rule 145 transaction), covering any of this corporation's Common Stock, the aggregate proceeds to this corporation of which would, at the public offering price, exceed \$5,000,000.

(b) Mechanics of Conversion. Before any holder of Series A Preferred shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for such Preferred Stock, and shall give written notice by mail, postage prepaid, to this corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver to such holder of Series A Preferred, or the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled and, subject to legally available funds, a check payable to the holder in the amount of any declared and unpaid dividends on the converted shares of Series A Preferred. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders thereof as of such date.

(c) Conversion Rates Adjustments. The Conversion Rates of the Series A Preferred shall each be subject to adjustment from time to time as follows:

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

(A) 'Options' shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(B) 'Convertible Securities' shall mean any evidences of indebtedness, shares (other than the Common Stock) or other securities convertible into or exchangeable for Common Stock.

(C) 'Additional Shares of Common Stock' shall mean all shares of Common Stock issued (or, pursuant to Section 5(c)(vi), deemed to be issued) by the Corporation, other than shares of Common Stock issued or issuable at any time:

(a) upon conversion of the shares of Preferred Stock authorized herein;

(b) to officers, directors, employees of, or consultants to, the Corporation pursuant to any plan or arrangement approved by the Board of Directors;

(c) as a dividend or distribution on the shares of Preferred Stock or any event for which adjustment is made pursuant to Section 5(c)(v) hereof;

(d) by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (a), (b), or this clause (d) or on shares of Common Stock so excluded.

(ii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation, at any time or from time to time, shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 5(c)(iv) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price for such series in effect on the date of, and immediately prior to, such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(a) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(b) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(c) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

i) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been

received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(d) no readjustment pursuant to clause i) or ii) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(e) in the case of any Options which expire by their terms not more than 90 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options.

(iii) Determination of Consideration. For purposes of this Section 5(c), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

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

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

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

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 5(c)(ii), relating to Options and Convertible Securities, shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of



additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(iv) In the event the corporation at any time or from time to time shall fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in Additional Shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, Additional Shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the Additional Shares of Common Stock or the Common Stock Equivalents (including the Additional Shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Rate for the Series A Preferred shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of such series shall be increased in proportion to such increase of outstanding shares of Common Stock (including Common Stock Equivalents).

(v) If the number of shares of Common Stock outstanding at any time is decreased by a reverse stock split or other combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Rate for the Series A Preferred shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of such series of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

(vi) If the Common Stock issuable upon conversion of the Series A Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the

Conversion Rate for the Series A Preferred then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series A Preferred shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such series of Preferred Stock immediately before that change.

(d) No Impairment. This corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this corporation but will at all times in good faith assist in the carrying out of all of the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred against impairment.

(e) No Fractional Shares and Certificates as to Adjustments.

(i) No fractional shares shall be issuable upon conversion of the Series A Preferred, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share based upon the total number of shares of Series A Preferred then being converted by such shareholder.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Rate pursuant to this Section 5, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of the Series A Preferred with respect to which the Conversion Rate is being adjusted or readjusted a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon written request at any time of any holder of Series A Preferred furnish or cause to be furnished to such holder a like certificate setting forth (a) such adjustment and readjustment, (b) the Conversion Rate at the time in effect, and (c) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such series of Preferred Stock.

(f) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this corporation

shall mail to each holder of Series A Preferred, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(g) Reservation of Stock Issuable upon Conversion. This 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 Series A Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(h) Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of Series A Preferred shall be deemed given if deposited in the United State mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

Section 6. Voting Rights. Each holder of shares of Series A Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

Section 7. Protective Provisions. So long as shares of Series A Preferred are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority, voting together as a class and not as separate series, of the total outstanding shares of Series A Preferred:

- (a) alter or change the rights, preferences or privileges of the shares of such series of Preferred Stock so as to affect adversely the shares of such stock; or
- (b) increase the authorized number of shares of such series of Preferred Stock.

Section 8. Status of Converted or Redeemed Stock. In the event that any shares of Series A Preferred shall be converted or redeemed pursuant to Section 4 or Section 5 hereof, the shares so converted or redeemed shall not be reissued by the corporation and the authorized number of shares of the Series of shares so converted or redeemed shall be reduced by the number of shares so converted or redeemed.

V

Section 1. Limitation of Directors' Liability. The liability of the directors of this Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

Section 2. Indemnification of Corporate Agents. This corporation is authorized to indemnify the directors and officers of the corporation to the fullest extent permissible under California law.

Section 3. Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article V shall not adversely effect any right of indemnification or limitation of liability of an agent of this Corporation relating to acts or omissions occurring prior to such repeal or modification.

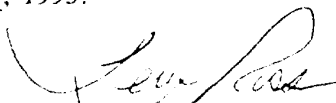
CEMAX, INC.


OFFICERS' CERTIFICATE

Pursuant to Section 1103 of the California General Corporation Law, Terry Ross and Michael J. O'Donnell certify that:

1. They are the President and the Assistant Secretary, respectively, of Cemax, Inc., a corporation organized under the laws of the State of California.
2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock", respectively. There are authorized four series of Preferred Stock, designated "Series A Preferred Stock", "Series B Preferred Stock", "Series C Preferred Stock" and "Series D Preferred Stock", respectively.
3. There were 1,560,495 shares of Common Stock, 5,477,400 shares of Series A Preferred Stock, 2,723,677 shares of Series B Preferred Stock, 2,143,383 shares of Series C Preferred Stock and 500,047 shares of Series D Preferred Stock outstanding as of the record date (the "Record Date") and entitled to vote by written consent in which the Agreement and Plan of Merger attached hereto (the "Merger Agreement") was approved.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.
5. The percentage vote required was (i) more than 50% of the votes entitled to be cast by holders of Common Stock outstanding as of the Record Date; and (ii) more than 50% of the votes entitled to be cast by holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, and Series D Preferred Stock, voting as a single class.
6. We further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of his own knowledge.

Executed at Fremont, California on June 12, 1995.

  
\_\_\_\_\_  
Terry Ross

  
\_\_\_\_\_  
Michael J. O'Donnell

ICON MEDICAL SYSTEMS, INC.

OFFICERS' CERTIFICATE

Pursuant to Section 1103 of the California General Corporation Law, Jeremy B. Rubin certifies that:

1. He is the President and the Secretary of ICON Medical Systems, Inc., a California corporation.

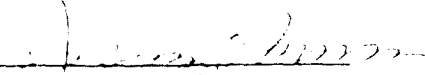
2. The corporation has authorized only one class of stock, and the number of shares outstanding was 16,164,566 as of the record date (the "Record Date"), and entitled to vote by written consent in which the Agreement and Plan of Merger attached hereto (the "Merger Agreement") was approved.

3. The principal terms of the Merger Agreement were approved by the board of directors of the corporation, and by the vote of a number of shares of the corporation which equaled or exceeded the vote required.

4. The percentage vote required was more than 50% of the votes entitled to be cast by shareholders as of the Record Date.

6. I further declare under penalty of perjury under the laws of the State of California that I have read the foregoing certificate and know the contents thereof and that the same is true of my own knowledge.

Executed at Campbell, California on June 9, 1995.

By:   
Jeremy B. Rubin