

08-23-1999

SHEET

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

FORM PTO-1594  
(Rev. 6-93)



OMB N. 0651-0011 (exp. 4/94)

101124043

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

MD 8-16-99

1. Name of conveying party(ies):

TUDOR MARKETING CORPORATION

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

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

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

Name: TUDOR PUBLISHING COMPANY

Internal Address:

Street Address: 1320 Columbia Street

City: San Diego State: CA Zip: 92101

Individual(s) citizenship

Association

General Partnership

Limited Partnership

Corporation-State of 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

3. Nature of conveyance:

Assignment  Merger  
 Security Agreement  Change of Name  
 Other -

Execution Date: 9 September 1993

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,822,120

1,981,813

Additional numbers attached?  Yes  No

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

Name: Lawrence A. Maxham  
Address: BAKER & MAXHAM  
Symphony Towers, 750 "B" Street, Suite 3100  
San Diego, California 92101

6. Total number of applications and registrations involved: 2

7. Total fee (37 C.F.R. 3.41).....\$ 65.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

02-0460

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

DO NOT USE THIS SPACE

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.

Lawrence A. Maxham  
Name of Person Signing

Signature

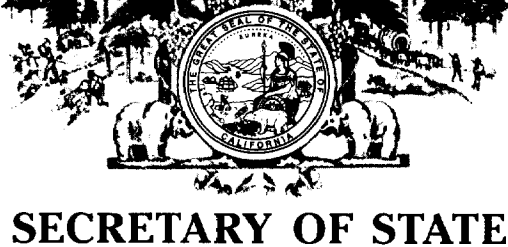
11 August 1999

Date

Total number of pages including cover sheet, attachments, and document: 19

Mail documents to be recorded with required cover sheet information to:  
COMMISSIONER OF PATENTS AND TRADEMARKS, BOX ASSIGNMENTS  
WASHINGTON, D.C. 20231

# State of California

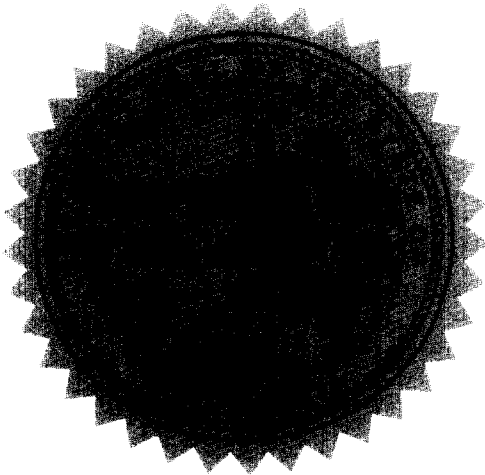


I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 17 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

*IN WITNESS WHEREOF*, I execute this certificate and affix the Great Seal of the State of California this

MAY 26 1966



*Bill Jones*

Secretary of State

NOT

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FILED *BAM*  
in the office of the Secretary of State  
of the State of California

SEP 09 1993

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
TUDOR MARKETING CORPORATION

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

William P. Tudor certifies that:

1. He is the Chairman of the Board of Directors, President and Secretary, of Tudor Marketing Corporation, a California corporation (hereinafter called the "Corporation").

2. The Articles of Incorporation of the Corporation are amended and restated to read as follows:

I.

The name of the Corporation is Tudor Publishing Company.

II.

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 Corporation Code.

III.

A. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 12,607,500 shares, 10,000,000 shares of which shall be Common Stock and 2,607,500 shares of which shall be Preferred Stock.

B. Of the authorized shares of Preferred Stock, 751,667 shares are hereby designated "Series A Preferred Stock," 355,833 shares are hereby designated "Series B Preferred Stock" and 1,500,000 shares are hereby designated "Series C Preferred Stock" with the respective rights, preferences, privileges and restrictions as set forth in the succeeding provisions of this Article.

C. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows:

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1.

1. Dividends. The holders of the Preferred Stock shall be entitled to receive dividends when and as declared by the Board of Directors at the rate of \$.0675 per share of Series A Preferred Stock per annum, \$.135 per share of Series B Preferred Stock per annum and \$.27 per share of Series C Preferred Stock per annum (each as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares). The right to such dividends on the Preferred Stock shall not be cumulative, and no right shall accrue to the holders of Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any prior year. No dividend shall be paid on or declared and set apart for the shares of any series of Preferred Stock unless at the same time a like proportionate dividend, ratably in proportion to the respective annual dividend rates fixed therefor, shall be paid on or declared and set apart for the shares of all other such series of Preferred Stock. No dividends (other than those payable solely in Common Stock) shall be paid on any Common Stock of the Corporation during any fiscal year of the Corporation until dividends in the total amount of \$.0675 per share of Series A Preferred Stock, \$.135 per share of Series B Preferred Stock and \$.27 per share of Series C Preferred Stock (each as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares) shall have been paid or declared and set apart during that fiscal year.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, the amount of \$.75 per share of Series A Preferred Stock, \$1.50 per share of Series B Preferred Stock and \$3.00 per share of Series C Preferred Stock (each as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such series) plus all declared but unpaid dividends on such share for each share of Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Preferred Stock in relative proportion to the amount each such holder would have been entitled to receive if assets and funds had been sufficient to permit payment of the full aforesaid preferential amounts to all holders of Preferred Stock.

(b) After payment to the holders of the Preferred Stock of the amounts set forth in Sections 2(a) above, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed among the holders of the Common Stock and the Preferred Stock in proportion to the number of shares of Common Stock then held by them and the shares of Common Stock which they then have the right to acquire upon conversion of the shares of Preferred Stock then held by them; *provided, however,* that at such time as the holders of the Series A Preferred Stock shall have received pursuant to Sections 2(a) and 2(b) hereof an aggregate amount equal to \$3.75 per share of Series A Preferred Stock (as

adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares), the holders of Series A Preferred Stock shall not receive any further portion of the remaining assets of the Corporation available for distribution to its shareholders and all such remaining assets shall be distributed to the holders of the Common Stock, the Series B Preferred Stock and the Series C Preferred Stock to the extent such holders of Series B Preferred Stock and Series C Preferred Stock remain eligible hereunder to receive such remaining assets; *provided further* that at such time as the holders of the Series B Preferred Stock shall have received pursuant to Sections 2(a) and 2(b) hereof an aggregate amount equal to \$7.50 per share of Series B Preferred Stock (as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares), the holders of Series B Preferred Stock shall not receive any further portion of the remaining assets of the Corporation available for distribution to its shareholders and all such remaining assets shall be distributed to the holders of the Common Stock and the Series C Preferred Stock to the extent such holders of Series C Preferred Stock remain eligible hereunder to receive such remaining assets; *and provided further* that at such time as the holders of the Series C Preferred Stock shall have received pursuant to Sections 2(a) and 2(b) hereof an aggregate amount equal to \$15.00 per share of Series C Preferred Stock (as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares), the holders of Series C Preferred Stock shall not receive any further portion of the remaining assets of the Corporation available for distribution to its shareholders and all such remaining assets shall be distributed to the holders of the Common Stock.

(c) For purposes of this Section 2, (i) any acquisition of the Corporation by means of merger or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued or caused to be issued by the acquiring corporation or its subsidiary (other than a mere reincorporation transaction), (ii) a sale of all or substantially all of the assets of the Corporation, or (iii) any consolidation or merger involving the Corporation or any of its subsidiaries with or into any other corporation, or any other entity or person, other than a wholly-owned subsidiary, in which the shareholders of the Corporation own less than a majority of the surviving corporation immediately following such consolidation or merger shall be deemed to be a liquidation, dissolution or winding up and shall entitle the holders of the Preferred Stock and Common Stock to receive at the closing in cash, securities or other property (valued as provided in Section 2(d) below) amounts as specified in Sections 2(a) and 2(b).

(d) Whenever the distribution provided in this Section 2 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board of Directors.

### 3. Redemption.

(a) Beginning on the fifth anniversary of the Original Issue Date (as hereinafter defined) of the Series C Preferred Stock and at the individual option of each holder of shares of Series A Preferred Stock, the Corporation shall redeem on such date and each anniversary of such Original Issue Date thereafter (each a "Series A Redemption Date"), the number of

shares of Series A Preferred Stock held by such holder that is specified in a request for redemption delivered to the Corporation by the holder not less than 60 days prior to the applicable Series A Redemption Date by paying in cash therefor \$.825 per share of Series A Preferred Stock (as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares) plus all declared but unpaid dividends on such shares (the "Series A Redemption Price"); *provided, however*, that the Corporation shall not be required under this Section 3(a) to redeem from any particular holder in connection with any one Series A Redemption Date a number of shares of Series A Preferred Stock greater than 25% of the aggregate number of shares of Series A Preferred Stock held by such holder immediately prior to the first Series A Redemption Date.

(b) Beginning on the fifth anniversary of the Original Issue Date of the Series C Preferred Stock and at the individual option of each holder of shares of Series B Preferred Stock, the Corporation shall redeem on such date and each anniversary of such Original Issue Date thereafter (each a "Series B Redemption Date"), the number of shares of Series B Preferred Stock held by such holder that is specified in a request for redemption delivered to the Corporation by the holder not less than 60 days prior to the applicable Series B Redemption Date by paying in cash therefor \$1.65 per share of Series B Preferred Stock (as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares) plus all declared but unpaid dividends on such shares (the "Series B Redemption Price"); *provided, however*, that the Corporation shall not be required under this Section 3(b) to redeem from any particular holder in connection with any one Series B Redemption Date a number of shares of Series B Preferred Stock greater than 25% of the aggregate number of shares of Series B Preferred Stock held by such holder immediately prior to the first Series B Redemption Date.

(c) Beginning on the fifth anniversary of the Original Issue Date of the Series C Preferred Stock and at the individual option of each holder of shares of Series C Preferred Stock, the Corporation shall redeem on such date and each anniversary of such Original Issue Date thereafter (each a "Series C Redemption Date"), the number of shares of Series C Preferred Stock held by such holder that is specified in a request for redemption delivered to the Corporation by the holder not less than 60 days prior to the applicable Series C Redemption Date by paying in cash therefor \$3.30 per share of Series C Preferred Stock (as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares) plus all declared but unpaid dividends on such shares (the "Series C Redemption Price"); *provided, however*, that the Corporation shall not be required under this Section 3(c) to redeem from any particular holder in connection with any one Series C Redemption Date a number of shares of Series C Preferred Stock greater than 25% of the aggregate number of shares of Series C Preferred Stock held by such holder immediately prior to the first Series C Redemption Date.

(d) Upon receipt of any request for redemption of shares of any series of Preferred Stock hereunder, the Corporation shall promptly give written notice of such request to each nonrequesting holder of record (at the close of business on the business day next preceding the day on which notice is given) of such series of Preferred Stock, postage prepaid, at the address last shown on the records of the Corporation for such holder. Such nonrequesting

holders of Preferred Stock shall have 30 days from the date such notice is mailed to request redemption of their shares of such series of Preferred Stock on the terms contained herein.

(e) At least ten but no more than 25 days prior to each Series A Redemption Date, Series B Redemption Date and Series C Redemption Date (each a "Redemption Date"), written notice shall be mailed, first class 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 the series of Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Series A Redemption Price, Series B Redemption Price or Series C Redemption Price, as the case may be (the "Redemption Price"), the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in Section 3(f) on or after the Redemption Date, each holder of such series of Preferred Stock to be redeemed shall surrender to the 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 less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(f) 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 shares of the series of Preferred Stock designated for redemption in the Redemption Notice as holders of such series of Preferred Stock (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 the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of such series of Preferred Stock. Such shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

(g) On or prior to each Redemption Date, the Corporation shall deposit the Redemption Price of all shares of the series of Preferred Stock designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders

of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust company to pay the Redemption Price for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered his share certificate to the Corporation pursuant to Section 3(e) above. Such instructions shall also provide that any moneys deposited by the Corporation pursuant to this Section 3(g) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 5 of this Article prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this Section 3(g) remaining unclaimed at the expiration of two years following the Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

4. Voting Rights. Except as otherwise expressly provided herein or as required by law, the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share 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 Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

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

(a) Right to Convert.

(i) Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share and on or prior to the fifth day prior to the Redemption Date, if any, as may have been fixed in any Redemption Notice with respect to such share of Preferred Stock, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (A) in the case of the Series A Preferred Stock, \$.75, (B) in the case of the Series B Preferred Stock, \$1.50, and (C) in the case of the Series C Preferred Stock, \$3.00 by the then applicable conversion price (the "Conversion Price") for that series, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The Conversion Price for the Series A Preferred Stock shall initially be \$.75 per share, the Conversion Price for the Series B Preferred Stock shall initially be \$1.50 per share and the Conversion Price for the Series C Preferred Stock shall initially be \$3.00 per share. Such initial Conversion Prices shall be adjusted as hereinafter provided.

(ii) Each share of each series of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price for such series



(i) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Company), at a public offering price prior to underwriter commissions and expenses, equal to or exceeding \$7.50 per share of Common Stock (appropriately adjusted for subdivisions and combinations of shares of Common Stock and dividends on Common Stock payable in shares of Common Stock) and aggregate gross proceeds to the Corporation and/or any Selling Shareholders equal to or exceeding \$7,500,000.

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

(c) Adjustments to Conversion Price for Diluting Issues.

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

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

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

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

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

(1) issued or issuable upon conversion of shares of Preferred Stock;

(2) issued or issuable to officers, directors or employees of, or consultants to, the Corporation, on terms approved by the Board of Directors;

(3) issued or issuable as a dividend or distribution on the Preferred Stock; or

(4) for which adjustment of the Conversion Price for a series of Preferred Stock is made pursuant to Section 5(c)(vi).

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular share of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such share of Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date of a series of Preferred Stock shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, *provided* 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)(v) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price for such series of Preferred Stock 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 adjustments 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 in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights

of conversion or exchange under such Convertible Securities *provided, however*, that no such adjustment of the Conversion Price shall affect Common Stock previously issued upon conversion of such series of Preferred Stock);

(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:

(1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the 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

(2) 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 (determined pursuant to Section 5(c)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to Sections 5(c)(iii)(B) or 5(c)(iii)(C) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (1) the Conversion Price on the original adjustment date, or (2) 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;

(E) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made, except as to shares of Preferred Stock converted in such period, until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in Section 5(c)(iii)(C) above; and

(F) if any such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed thereof, the adjustment previously made in the Conversion Price which became effective on such record date shall be

canceled as of the close of business on such record date, and shall instead be made on the actual date of issuance, if any, of such Options or Convertible Securities.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5(c)(iii)) without consideration or for a consideration per share less than the Conversion Price for any series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price for each such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Conversion Price then in effect for such series of Preferred Stock by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price then in effect for such series of Preferred Stock, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purposes of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issuance shall be calculated on a fully diluted basis, as if all shares of Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding Options had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Preferred Stock, Convertible Securities or outstanding Options solely as a result of the adjustment of the respective Conversion Prices (or other conversion ratios) resulting from the issuance of Additional Shares of Common Stock causing such adjustment.

(v) 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:

(1) 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;

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

(3) 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 cash and property other than cash be in the proportion of such consideration so received, computed as provided in Sections 5(c)(v)(A)(1) and 5(c)(v)(A)(2) above, as determined in good faith by the Board of Directors.

(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)(iii) relating to Options and Convertible Securities, shall be determined by dividing

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

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

(vi) Adjustments for Combinations or Subdivisions of Common Stock.

In the event that the Corporation at any time or from time to time after the Original Issue Date of a series of Preferred Stock shall declare or pay any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for such series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate.

(d) Adjustment for Reclassification, Exchange and Substitution: If at any time or from time to time after the Original Issue Date of a series of Preferred Stock, the Common Stock issuable upon the conversion of the 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 5 or in Section 2(c)), in any such event each holder of shares of such 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 such shares equal to the maximum number of shares of Common Stock into which 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.

(e) Other Distributions. In the event the Corporation shall at any time or from time to time after the Original Issue Date of a series of Preferred Stock make or issue, or fix 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 or any of its subsidiaries other than Additional Shares of Common Stock, then in each such event provision shall be made so that the holders of Preferred Stock shall receive, upon the conversion thereof, the securities of the Corporation which they would have received had their stock been converted into Common Stock 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 5 with respect to the rights of the holders of the Preferred Stock or with respect to such other securities by their terms.

(f) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 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 Preferred Stock against impairment.

(g) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of a series of Preferred Stock pursuant to this Section 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and cause independent public accountants selected by the Corporation to verify such computation and prepare and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each series of Preferred Stock.

(h) Notices of Record Date. In the event of any taking by the 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 security or right convertible into or entitling the holder thereof to receive Additional Shares of Common Stock, or 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, the

Corporation shall mail to each holder of Preferred Stock at least 20 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, security or right, and the amount and character of such dividend, distribution, security or right.

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

(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 Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Articles of Incorporation.

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

(l) Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at its address appearing on the books of the Corporation.

(m) Adjustments. Subject to the provisions of Sections 2(c) and 6 hereof, in case of any reorganization or any reclassification of the capital stock of the Corporation, any consolidation or merger of the Corporation with or into another corporation or corporations, or the conveyance of all or substantially all of the assets of the Corporation to another corporation, each share of Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property (including cash) to which a holder of the number of shares of

Common Stock deliverable upon conversion of such share of Preferred Stock would have been entitled upon the record date of (or date of, if no record date is fixed) such reorganization, reclassification, consolidation, merger or conveyance; and, in any case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of Preferred Stock, to the end that the provisions set forth herein shall thereafter be applicable, as nearly as equivalent as is practicable, in relation to any shares of stock or the securities or property (including cash) thereafter deliverable upon the conversion of the shares of Preferred Stock.

6. Restrictive Covenants.

(a) The Corporation shall not, without the vote or written consent by the holders of a majority of the then outstanding shares of each series of Preferred Stock voting or consenting separately as a class:

(i) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws so as to adversely affect the rights, preferences and privileges of any outstanding series of Preferred Stock, or

(ii) Increase the total number of authorized shares of Preferred Stock,  
or

(iii) Authorize or issue, or obligate itself to issue, any other equity security senior to or on a parity with any series of Preferred Stock as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights or otherwise, or create any obligation or security convertible into or exchangeable for, or having any option rights to purchase, any such equity security which is senior to or on a parity with any series of Preferred Stock *provided, however,* that this Section 6(a)(iii) shall not apply to the issuance of Common Stock (or options to purchase Common Stock) with voting rights on a parity with the voting rights of the Preferred Stock (other than the voting rights expressly reserved herein for the Preferred Stock), or

(iv) Effect any sale or other conveyance of all or substantially all of the assets of the Corporation or any of its subsidiaries, or any consolidation or merger involving the Corporation or any of its subsidiaries with or into any other corporation, or any other entity or person, other than a wholly owned subsidiary, in which the shareholders of the Corporation own less than a majority of the voting stock of the surviving corporation immediately following such consolidation or merger, or

(v) Effect any reclassification, recapitalization or other change with respect to any outstanding shares of stock of the Corporation or any liquidation, dissolution or winding-up of the Corporation, or



(vi) Pay or declare any dividend or distribution on, or redeem (other than pursuant to agreements with the holders thereof providing for a repurchase of shares of Common Stock upon termination of employment with or services to the Corporation), any shares of Common Stock, or

(vii) Do any act or thing that would result in taxation of the holders of shares of any series of Preferred Stock under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereinafter from time to time amended).

(b) So long as no less than 500,000 shares of Series A Preferred Stock or Series B Preferred Stock are outstanding, the holders of the Series A Preferred Stock and Series B Preferred Stock voting together as a single class shall elect one (1) member of the Corporation's Board of Directors; so long as no less than 500,000 shares of Series C Preferred Stock are outstanding, the holders of the Series C Preferred Stock, voting as a class, shall elect one (1) member of the Corporation's Board of Directors.

7. No Reissuance of Preferred Stock. No share or shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be returned to the status of undesignated shares of Preferred Stock.

8. Residual Rights. All rights accruing to the outstanding shares of this Corporation not expressly provided for the contrary herein shall be vested in the Common Stock.

#### IV.

The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. Any repeal or modification of this Article shall only be prospective and shall not affect the rights under this Article in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

#### V.

The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its shareholders through bylaw provisions, through agreements with the agents, and/or through

shareholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code. Any repeal or modification of this Article shall only be prospective and shall not affect the rights under this Article in effect at the time of the alleged occurrence of any act or omission to act giving rise to indemnification.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the Board of Directors.

4. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 & 903 of the California Corporations Code. The total number of outstanding shares of the Corporation is 1,500,000 shares of Common Stock and 1,107,500 shares of Preferred Stock. The number of shares voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was more than 50% of the outstanding shares of Common Stock and more than 50% of the outstanding shares of Preferred Stock.

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I 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 my own knowledge.

Dated: September 1, 1993



William P. Tudor  
Chairman of the Board of Directors,  
President and Secretary



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