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U.S. Patent & TMOtc/TM Mail Rcpt Dt. #10

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TRADEMARKS

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TO THE HONORABLE COMMISSIONER OF PATENTS AND TRADEMARKS

1. California Microwave Services Division, Inc. is a corporation organized under and existing by virtue of the laws of the State of Delaware, located and doing business at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

2. Interlink Communications, Inc., is a Corporation duly organized under and existing by virtue of the laws of the state of Delaware having its head office and principle place of business at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

3. This is a change of corporate name.

4. The attached document was executed on May 29, 1998.

5. The following trademark applications/registrations are involved:

09/20/1999 NTHA11	00000279	1394371	
01 FC:481			40.00 OP
02 FC:482			125.00 OP

**EQUASTAR**

<b>REGISTRATION NUMBER</b>	<b>ISSUED</b>	<b>SERIAL NUMBER</b>	<b>FILING DATE</b>
1,394,371	20 May 86	75/559,449	23 Sept 85

**EQUATORIAL**

<b>REGISTRATION NUMBER</b>	<b>ISSUED</b>	<b>SERIAL NUMBER</b>	<b>FILING DATE</b>
1,319,036	12 Feb 85	73/461,800	20 Jan 84

**EQUATORIAL & Design**

<b>REGISTRATION NUMBER</b>	<b>ISSUED</b>	<b>SERIAL NUMBER</b>	<b>FILING DATE</b>
1,228,254	22 Feb 83	73/307,257	24 Apr 81

**EQUATORIAL & Design**

<b>REGISTRATION NUMBER</b>	<b>ISSUED</b>	<b>SERIAL NUMBER</b>	<b>FILING DATE</b>
1,263,498	10 Jan 84	73/385,380	13 Sept 82

**RADIOLINK**

<b>REGISTRATION NUMBER</b>	<b>ISSUED</b>	<b>SERIAL NUMBER</b>	<b>FILING DATE</b>
1,803,094	9 Nov 93	74/131,884	17 Jan 91

**RADIOLINK (stylized)**

<b>REGISTRATION NUMBER</b>	<b>ISSUED</b>	<b>SERIAL NUMBER</b>	<b>FILING DATE</b>
1,799,093	19 Oct 93	74/131,883	17 Jan 91

6. All future correspondence concerning this identified trademark should be addressed to:

Jacqueline Zion  
Swidler Berlin Shereff Friedman, LLP  
Westchester Financial Center  
11 Martine Avenue, 9th Floor  
White Plains, New York 10606

7. There are **six (6)** application(s)/registrations involved with this change of corporate name.

8. A check in the amount of **forty dollars (\$40.00)** is enclosed to cover the recording fee.

9. The Commissioner is authorized to charge any additional fees which may be required or credit any overpayment to **Deposit Account No. 19-5127**. **Enclosed is a duplicate copy of this letter for this purpose.**


10. 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.

Respectfully submitted,

Swidler Berlin shereff Friedman,

LLP

Dated: \_\_\_\_\_



Jacqueline Zion  
Westchester Financial Center  
11 Martine Avenue  
White Plains, New York 10606  
(914) 684-0600  
Attorneys for Applicant(s)

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "CALIFORNIA MICROWAVE SERVICES DIVISION, INC.", FILED IN THIS OFFICE ON THE TWENTY-NINTH DAY OF MAY, A.D. 1998, AT 4:30 O'CLOCK P.M.



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

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Edward J. Freel, Secretary of State

2890411 8100

991239552

AUTHENTICATION:

9804182

DATE:

06-15-99

TRADEMARK

REEL: 001960 FRAME: 0283

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF**

**CALIFORNIA MICROWAVE SERVICES DIVISION, INC.**

**(The original Certificate of Incorporation was filed on April 29, 1998 and is being amended and restated pursuant to Sections 242 and 235 of the General Corporation Law of the State of Delaware)**

**ARTICLE FIRST:** The name of the corporation is Interlink Communications, Inc. (hereinafter referred to as the "*Corporation*").

**ARTICLE SECOND:** The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

**ARTICLE THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "*DGCL*").

**ARTICLE FOURTH:**

**Section 1. Authorized Shares.**

The total number of shares of capital stock which the Corporation has authority to issue is 689,500 shares, consisting of :

- (a) 89,500 shares of Convertible Participating Preferred Stock, par value \$.01 per share (the "*Preferred Stock*"); and
- (b) 600,000 shares of Common Stock, par value \$.01 per share (the "*Common Stock*").

The Preferred Stock and the Common Stock are sometimes referred to herein collectively as the "*Capital Stock*." Certain capitalized terms used in this Amended and Restated Certificate of Incorporation are defined in Section 5 of this *Article FOURTH*.

**Section 2. Provisions Applicable to Preferred Stock.**

**2.1 Dividends.**

- (a) **General Obligation.** The Corporation shall not pay dividends to the

holders of the Preferred Stock in respect of any share of Preferred Stock (a "Preferred Share"), except as and to the extent provided in clause (b) of this Section 2.1.

(b) *Participation in Common Dividends.* The holders of Preferred Shares shall be entitled to participate, on a share for share basis with the Common Stock, in all dividends declared or paid on the Common Stock.

**2.2 Liquidation.** Upon any Liquidation of the Corporation, each holder of Preferred Shares shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities, an amount in cash equal to the aggregate Liquidation Value of all Preferred Shares held by such holder, and thereafter the holders of Preferred Shares shall be entitled to participate, on a share for share basis with the Common Stock, in all amounts available to be distributed to the holders of the Common Stock in any Liquidation of the Corporation. If upon any such Liquidation of the Corporation, the assets of the Corporation are insufficient to permit payment to the holders of Preferred Shares the aggregate amount which they are entitled to be paid in respect of their Preferred Shares, then all of the assets of the Corporation available for distribution to the holders of Preferred Shares shall be distributed ratably among such holders based on the number of Preferred Shares held by each such holder. The Corporation shall mail written notice of its Liquidation not less than 60 days prior to the payment date stated therein to each record holder of Preferred Shares.

**2.3 Priority of Preferred Stock.** So long as any Preferred Share remains outstanding, (1) the Corporation shall not authorize or issue any class or series of capital stock of the Corporation that is senior to the Preferred Stock in priority with respect to dividends or distributions or upon Liquidation, and (2) neither the Corporation nor any Subsidiary shall redeem, purchase or otherwise acquire directly or indirectly, or set apart funds for the redemption, purchase or acquisition of, any Junior Securities, nor shall the Corporation directly or indirectly pay or declare any dividend or make any distribution upon any Junior Securities (other than a dividend payable solely in Junior Securities); provided, however, that the Corporation may purchase Junior Securities (a) in accordance with the provisions of the Stockholders Agreement or (b) as may otherwise be approved by the Corporation's board of directors from (i) any employee, or former employee, of the Corporation or its Subsidiaries, (ii) any member of such employee's Family Group, or (iii) any transferee of any such employee or member of such employee's Family Group who takes pursuant to the applicable laws of descent and distribution.

**2.4 Voting Rights.** Except as otherwise required by applicable law or in this Amended and Restated Certificate of Incorporation, the Preferred Stock shall vote together with the Common Stock as one class, and each holder of Preferred Stock shall be entitled to one vote per Preferred Share on all matters to be voted on by the Corporation's stockholders.

## 2.5 Redemptions.

(a) *General.* Subject to and in accordance with this Section 2.5, the Corporation may at any time and from time to time redeem all or any portion of the Preferred Stock then outstanding.

(b) *Redemption Payment.* For each Preferred Share which is to be redeemed, the Corporation shall be obligated on the Redemption Date (as defined below) to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office or such other place of which the Corporation notifies such holder in writing of the certificate representing such Preferred Share) an amount, in immediately available funds or by certified or cashiers check, at the option of the Corporation, equal to the Liquidation Value of such Preferred Share, and to issue certificates representing the shares of Common Stock issuable pursuant to clause (d) of this Section 2.5.

(c) *Notice of Redemption.* The Corporation shall deliver written notice of any redemption of Preferred Stock to each record holder of Preferred Stock not more than 60 nor less than 10 days prior to the date on which such redemption is to be made (the "*Redemption Date*"). Upon delivery of any notice of redemption, the Corporation shall become obligated to redeem the total number of Preferred Shares specified in such notice on the Redemption Date unless such notice of redemption is rescinded by the Corporation prior to the Redemption Date. In case fewer than the total number of Preferred Shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed Preferred Shares shall be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed Preferred Shares.

(d) *Determination of the Number of Each Holder's Preferred Shares to be Redeemed; Issuance of Common Stock on Redemption.* If the Corporation redeems less than all of the outstanding Preferred Stock, then the funds to be used by the Corporation to effect any such redemption shall be applied by the Corporation to redeem Preferred Shares ratably among the holders of Preferred Stock based on the number of Preferred Shares held by each such holder. In addition, each holder of Preferred Stock shall be entitled to receive and the Corporation shall issue in any redemption under this *Article FOURTH* a number of shares of Common Stock equal to the number of Preferred Shares to be redeemed from such holder in such redemption.

(e) *Dividends After Redemption Date.* On the date on which the Liquidation Value of a Preferred Share is paid to the holder thereof, all rights of the holder of such Preferred Share with respect to such Preferred Share shall cease (other than the right to receive Common Stock in accordance with clause (d) of this Section 2.5), and such Preferred Share shall not be deemed to be outstanding.

(f) *Redeemed or Otherwise Acquired Preferred Shares.* Any Preferred Shares which are redeemed or otherwise acquired by the Corporation shall be canceled and shall not be reissued, sold or transferred.

## 2.6 Conversion.

(a) *General.* Concurrent with the occurrence of an Initial Public Offering, the Preferred Stock shall be converted into Common Stock, subject to and in accordance with this Section 2.6.

(b) *Conversion.* The Corporation shall on the Conversion Date (as defined below) convert the number of Preferred Shares to be converted (the "*Conversion Shares*") into a number of shares of Common Stock computed by *dividing* (i) the product of the number of Conversion Shares and the applicable Liquidation Value thereof *by* (ii) the Conversion Price. In addition to the shares of Common Stock issuable pursuant to the foregoing sentence, each Preferred Share that constitutes a Conversion Share shall be converted into one additional share of Common Stock.

(c) *Conversion Procedure.*

(i) The Corporation shall deliver written notice of any conversion of Preferred Stock to each record holder of Preferred Stock not more than 60 nor less than 10 days prior to the date on which such conversion is to be made (the "*Conversion Date*"). Upon delivery of any notice of conversion, the Corporation shall become obligated to convert the total number of Preferred Shares specified in such notice upon the Conversion Date unless the Initial Public Offering is not consummated.

(ii) The conversion of Preferred Stock shall be deemed to have been effected as of the Conversion Date, and the certificate or certificates representing the Conversion Shares shall be surrendered at the principal office of the Corporation on such date or as soon as practicable thereafter (or at such other place of which the Corporation notifies in writing the holders of the certificate or certificates representing such Conversion Shares). At such time as such conversion has been effected, the rights of the holder of such Conversion Shares as such holder shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iii) As soon as possible after a conversion has been effected, the Corporation shall deliver to the converting holder:

(1) a certificate or certificates representing the number of shares of Common Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified; and

(2) payment of any amount payable under clause (v) of this Section 2.6 with respect to such conversion.



(iv) The issuance of certificates for shares of Common Stock upon conversion of Preferred Stock shall be made without charge to the holders of such Preferred Stock for any cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock.

(v) If any fractional amount of a share of Common Stock would, except for the provisions of this clause (v), be deliverable upon any conversion of a holder's Preferred Stock, the Corporation, in lieu of delivering the fractional share therefor, may pay an amount to the holder thereof equal to the product of the Conversion Price and such fractional amount.

(d) *Conversion Price.* The price per share at which each Preferred Share shall be subject to conversion pursuant to clause (b) of this Section 2.6 (the "*Conversion Price*") shall be the price per share received by the Corporation (net of underwriting discounts and commissions) in respect of a share of Common Stock in the Initial Public Offering.

**2.7 Subdivision or Combination of Common Stock.** If the Corporation at any time (i) subdivides (by any stock split, stock dividend, recapitalization or otherwise) shares of Common Stock into a greater number of shares or (ii) combines (by reverse stock split or otherwise) shares of Common Stock into a smaller number of shares, then the Preferred Shares shall be subdivided or combined, as the case may be, in the same manner and the Liquidation Value shall be proportionately adjusted by the board of directors of the Corporation in good faith.

### **Section 3. Provisions Applicable to Common Stock.**

**3.1 Voting Rights.** Except as otherwise required by applicable law and the provisions of this Amended and Restated Certificate of Incorporation, the holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the Corporation's stockholders.

**3.2 Dividends.** As and when dividends are declared or paid on the Common Stock, whether in cash, property or securities of the Corporation, subject to and taking into account the provisions of Section 2.1(b) of this *Article FOURTH*, the holders of Common Stock shall be entitled to participate in such dividends ratably on a per share basis (determined on the basis of the number of shares of Common Stock and Preferred Shares then outstanding). The rights of the holders of Common Stock to receive dividends are subject to the provisions of the Preferred Stock.

**3.3 Liquidation.** Subject to the provisions of Section 2 of this *Article FOURTH*, and taking into account the provisions of Section 2.2 of this *Article FOURTH*, the holders of the Common Stock shall be entitled to participate ratably on a per share basis (determined on the basis of the number of shares of Common Stock and Preferred Shares then outstanding) in all amounts available to be distributed to the holders of the Common Stock in any Liquidation of the Corporation.

**3.4 Preemptive Rights.** The holders of Common Stock shall have certain preemptive rights as more fully set forth in the Stockholders Agreement.

**Section 4. Provisions Applicable to Capital Stock.**

**4.1 Registration of Transfer.** The Corporation shall keep at its principal office a register for the registration of Capital Stock. Upon the surrender of any certificate representing Capital Stock at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Capital Stock represented by such new certificate from the date to which dividends have been fully paid on such Capital Stock represented by the surrendered certificate. The issuance of new certificates shall be made without charge to the holders of the surrendered certificates for any cost incurred by the Corporation in connection with such issuance.

**4.2 Replacement.** Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of any series of Capital Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (*provided* that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such series represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Capital Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

**4.3 Amendment and Waiver.** No amendment, modification or waiver shall be binding or effective with respect to any provision of (i) Section 1 or 2 of this Article Fourth (or any definitions used therein) without the prior approval of the holders of a majority of the Preferred Stock outstanding at this time such action is taken and (ii) Section 3 of this Article Fourth (or any definitions used therein) without the prior approval of the holders of the majority of the Common Stock and the Preferred Stock, in each case outstanding at the time such action is taken, voting together as one class. Any approval required by this Section 4.3 may be obtained by vote at an annual or special meeting of the Corporation's stockholders or without a meeting by written consent.

**4.4 Notices.** Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, or by reputable overnight courier service, charges prepaid, and shall be deemed to have been given when received (i) by the Corporation, at its principal executive offices and (ii) by any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder) as indicated on the return receipt or courier service bill of lading or other delivery records.

**Section 5. Definitions.**

As used in this Amended and Restated Certificate of Incorporation, the following terms shall have the following meanings:

"*Employee Holder*" has the meaning given such term in the Stockholder Agreement.

"*Employee Majority*" means Employee Holders holding a majority of the Common Stock held by all Employee Holders.

"*Family Group*" means, with respect to any individual, such individual's spouse and descendants (whether natural or adopted) and any trust established and maintained for the benefit of such individual, such individual's spouse or such individual's descendants.

"*Initial Public Offering*" means the first sale by the Corporation of Common Stock to the public in an offering pursuant to an effective registration statement filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as then in effect; *provided* that an Initial Public Offering shall not include an offering made in connection with a business acquisition or combination or an employee benefit plan.

"*Junior Securities*" means (a) any class or series of capital stock of the Corporation, whether now existing or hereafter authorized, that is junior to the Preferred Stock in priority with respect to dividends or distributions or upon Liquidation and (b) any rights, warrants, options, convertible or exchangeable securities, exercisable for or convertible or exchangeable into, directly or indirectly, any class or series of capital stock described in clause (a) above, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

"*Liquidation*," with respect to the Corporation, means the liquidation, dissolution or winding up of the Corporation.

"*Liquidation Value*" means \$33.5195 per Preferred Share, subject to adjustment as provided in Section 2.7 of this *Article FOURTH*.

"*Loan Agreement*" means the Revolving and Term Loan Agreement dated as of May \_\_, 1998 between the Corporation and the lender named therein.

"*Person*" means an individual, a partnership, a joint venture, a corporation, an association, a joint stock company, a limited liability company, a trust, an unincorporated association and any other entity or organization.

"*Stockholders Agreement*" means the Stockholders Agreement dated as of May \_\_, 1998 among the Corporation and the other parties thereto, as the same may be amended or modified from time to time.

"*Subsidiary*" means any corporation with respect to which another specified corporation has the power to vote or direct the voting of sufficient securities to elect directors having a majority of the voting power of the board of directors of such corporation.

**ARTICLE FIFTH:** The Corporation is to have perpetual existence.

**ARTICLE SIXTH:** In furtherance and not in limitation of the powers conferred by statute, the Corporation's board of directors is hereby authorized to adopt, amend or repeal the bylaws of the Corporation.

**ARTICLE SEVENTH:** Meetings of stockholders may be held within or without the State of Delaware, as the bylaws may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Corporation's board of directors or in the bylaws of the Corporation. Elections of directors need not be by written ballot unless the bylaws of the Corporation so provide.

**ARTICLE EIGHTH:** Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders, or class of

stockholders, of the Corporation, as the case may be, and also on this Corporation.

**ARTICLE NINTH:** To the fullest extent permitted by the DGCL (including, without limitation, Section 102(b)(7)), as amended from time to time, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or amendment of this *Article NINTH* or adoption of any provision of the Certificate of Incorporation inconsistent with this *Article NINTH* shall have prospective effect only and shall not adversely affect the liability of a director of the Corporation with respect to any act or omission occurring at or before the time of such repeal, amendment or adoption of an inconsistent provision.

**ARTICLE TENTH:** The Corporation shall, to the fullest extent permitted by the DGCL (including, without limitation, Section 145 thereof), as amended from time to time, indemnify any promoter, director or officer whom it shall have power to indemnify from and against any and all of the expenses, liabilities or other losses of any nature. The indemnification provided in this *Article TENTH* shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be promoter, director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

**ARTICLE ELEVENTH:** The Corporation elects out of and shall not be governed by Section 203 of the DGCL.

**ARTICLE TWELFTH:**

**Section 1. Negative Covenants.**

(a) *Amendments to Preferred Stock or Common Stock.* The Corporation shall not reclassify or change any designation, rights, powers, preferences, qualifications, limitations or restrictions of the Preferred Stock or the Common Stock without the prior approval of the Employee Majority.

(b) *Redemption of Capital Stock.* The Corporation shall not redeem, purchase or acquire the Corporation's Capital Stock, other than (i) Preferred Stock or (ii) as specifically described in this Amended and Restated Certificate of Incorporation.

(c) *No Merger.* The Corporation shall not merge or consolidate with any Person (including, without limitation, the Corporation's parent corporation) or Subsidiary (i) prior to July 31, 1999 without the unanimous vote of the holders of the outstanding Common Stock or (ii) after July 31, 1999 unless and until each of the Pledge Agreements (as defined in the Loan Agreement) has been terminated and the Pledged Shares have been surrendered in accordance with paragraph 7 of the Pledge Agreements.

(d) **No Asset Sales.** The Corporation shall not sell, lease, exchange, mortgage, pledge or dispose of all or substantially all of the property or assets of the Corporation in any transaction or series of related transactions (other than (i) the sale of inventory in the ordinary course of business or (ii) a sale of the manufacturing business of the Corporation) prior to July 31, 1999 without the unanimous vote of the holders of the outstanding Common Stock.

(e) **No Liquidation.** The Corporation shall not liquidate, dissolve or effect a recapitalization or reorganization in any form of transaction (including, without limitation, any reorganization into a limited liability company, a partnership or any other non-corporate entity which is treated as a partnership for federal income tax purposes) other than (i) upon the occurrence of an Event of Default (as defined in the Loan Agreement), (ii) prior to July 31, 1999 with the unanimous vote of the holders of the outstanding Common Stock or (iii) after July 31, 1999 upon the termination of each of the Pledge Agreements.

Any approval required by this Article *TWELFTII* may be obtained by vote at an annual or special meeting of the Corporation's stockholders or without a meeting by written consent.

**ARTICLE THIRTEENTH:** The Corporation reserves the right to amend or repeal any provision contained in this Amended and Restated Certificate of Incorporation in the manner now hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

By: 

Todd M. Binet  
Vice President