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To the Honorable Commissioner of Patents and Trade

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documents



1. Name of Conveying Party(ies):

RETINAL DISPLAYS INC.

Type of Entity:

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

Additional name(s) of conveying party(ies) attached? YES NO

2. Name and Address of Recipient:

11-04-1999

Name: DIGILENS INC. U.S. Patent & TMO/TM Mail Rpt Dt. #54

Internal Address:

Street Address: 306 Potrero Avenue
Sunnyvale, CA 94086

Type of Entity:

- Individual(s) Citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Delaware
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: N/A YES NO

(Designations must be 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: October 1, 1999

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

A. Trademark Application Number(s):

75/579303

B. Trademark Registration No.(s):

Additional numbers attached? YES NO

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

Name: *Joyce J. Dillon*
 Internal Address: *Foster Pepper & Shefelman*
 Street Address: *1111 Third Avenue, Suite 3400
 Seattle, Washington 98101*

6. Total number of applications: One

7. Total fee (37 CFR 3.41):..... \$40.

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

06-1629

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

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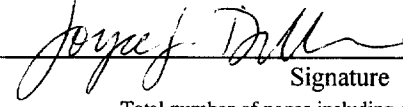
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9. Statement and signature:

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.

Joyce J. Dillon

Name of Person Signing



Signature

November 4, 1999

Date

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

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

Office of the Secretary of State

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 "RETINAL DISPLAYS, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF OCTOBER, A.D. 1999, AT 6 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



A handwritten signature in cursive script that reads "Edward J. Freel".

Edward J. Freel, Secretary of State

2734023 8100

991416830

AUTHENTICATION: 0006109

DATE: 10-04-99

TRADEMARK
REEL: 001990 FRAME: 0323

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF
RETINAL DISPLAYS, INC.**

Jonathan D. Waldern and Robert J. Brigham hereby certify that:

1. The original name of this corporation is Virtuality Research, Inc. and the date of filing the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware is March 27, 1997.

2. They are the duly elected and acting President and Secretary, respectively, of Retinal Displays, Inc., a Delaware corporation.

3. The Certificate of Incorporation of this corporation is hereby amended and restated to read as follows:

I.

The name of the corporation is DigiLens, Inc. (the "Corporation" or the "Company").

II.

The address of the registered office of the Corporation in the State of Delaware is:

**The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19805
County of New Castle**

The name of the Corporation's registered agent at said address is The Corporation Trust Company.

III.

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 the State of Delaware.

IV.

A. This 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 forty-five million (45,000,000) shares, thirty million (30,000,000) shares of which shall be Common Stock (the "Common Stock") and fifteen million (15,000,000) shares of which shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock shall have a par value of one tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one tenth of one cent (\$0.001) per share.

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the Common Stock of the Corporation.

C. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, within the limitations and restrictions stated in this Restated Certificate of Incorporation, to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. 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.

D. Fifty-seven thousand (57,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Preferred"), five million (5,000,000) shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "Series B Preferred"), and nine million one hundred and seventy-five thousand shares (9,175,000) of Preferred Stock are hereby designated Series C Preferred Stock (the "Series C Preferred").

E. The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred, the Series B Preferred and the Series C Preferred (collectively, the "Series Preferred") are as follows:

1. Dividend Rights.

(a) Holders of Series A Preferred, Series B Preferred, and Series C Preferred, in preference to the holders of any other stock of the Company ("Junior Stock"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cumulative dividends at the rate of eight and forty-two hundredths percent (8.42%), six percent (6%) and six percent (6%) respectively, of the "Original Issue Price" per annum on each outstanding share of Series A Preferred, Series B Preferred, and Series C Preferred, respectively (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Original Issue Price of the Series A Preferred shall be one hundred dollars (\$100.00) per share, the Original Issue Price of the Series B Preferred shall be one dollar forty-five cents (\$1.45) per share, and the Original Issue Price of the Series C Preferred shall be one dollar seventy three cents (\$1.73) per share. Such dividends shall accrue on (i) each share of Series A Preferred from the date on which such share is issued by the Company, (ii) on each share of Series B Preferred beginning on the date three years from the date on which such share is issued by the Company, and (iii) on each share of Series C Preferred beginning on the date three years from the date of which such share is issued by the Company. No accumulation of dividends on the Series A Preferred, the Series B Preferred or the Series C Preferred shall bear any interest.

(b) So long as any shares of Series Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) above) on the Series Preferred shall have been paid or declared and set apart. The provisions of this Section 1b shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock, or (iii) any repurchase of any outstanding securities of the Company that is unanimously approved by the Company's Board of Directors.

2. Voting Rights.

(a) **General Rights.** Except as otherwise provided herein or as required by law, the Series A Preferred shall have no voting rights. Except as otherwise provided herein or as required by law, the Series B Preferred and the Series C Preferred shall be voted equally with the shares of the Common Stock of the Company and not as a separate class, at any annual or special meeting of shareholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series B Preferred and the Series C Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series B Preferred and Series C Preferred, respectively, are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) **Separate Vote of Series A Preferred.** For so long as any shares of Series A Preferred remain outstanding, in addition to any other vote or consent required by law, the vote or written consent of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding Series A Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation), that alters or changes the voting powers, preferences, or other special rights or privileges, or restrictions of the Series A Preferred;

(ii) Any increase or decrease (other than by redemption) in the authorized number of shares of Series A Preferred Stock; or

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock ranking senior to the Series A Preferred in right of redemption, liquidation preference, or dividends or any increase in the authorized or designated number of any such new class or series.

(c) **Separate Vote of Series B Preferred.** For so long as any shares of Series B Preferred remain outstanding, in addition to any other vote or consent required by law, the vote or written consent of the holders of at least fifty five percent (55%) of the outstanding Series B Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation), that alters or changes the voting powers, preferences, or other special rights or privileges, or restrictions of the Series B Preferred;

(ii) Any increase or decrease (other than by redemption) in the authorized number of shares of Series B Preferred Stock; or

(iii) Any redemption, repurchase, payment of dividends or other distributions with respect to Junior Stock (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer).

(d) **Separate Vote of Series C Preferred.** For so long as any shares of Series C Preferred remain outstanding, in addition to any other vote or consent required by law, the vote or written consent of the holders of at least sixty-six and two-thirds percent ($66 \frac{2}{3}$ %) of the outstanding Series C Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation), that alters or changes the voting powers, preferences, or other special rights or privileges, or restrictions of the Series C Preferred;

(ii) Any increase or decrease (other than by redemption) in the authorized number of shares of Series C Preferred Stock; or

(iii) Any redemption, repurchase, payment of dividends or other distributions with respect to Junior Stock (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer).

(e) **Separate Vote of Series Preferred.** For so long as any shares of Series Preferred remain outstanding, the vote or written consent of the holders of at least a majority of the outstanding Series Preferred (as determined in Section 2(f) hereof) shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a

Certificate of Designation), that alters or changes the voting powers, preferences, or other special rights or privileges, or restrictions of the Series Preferred;

(ii) Any increase or decrease (other than by redemption) in the authorized number of shares of Preferred Stock;

(iii) Any redemption, repurchase, payment of dividends or other distributions with respect to Junior Stock (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer);

(iv) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock ranking senior to, or on a parity with, the Series Preferred in right of redemption, liquidation preference, or dividends or any increase in the authorized or designated number of any such new class or series; or

(v) Any voluntary dissolution or liquidation (as defined in Section 3(c)) of the Company.

(f) For the purpose of any vote or consent required under Section 2(e) hereof only, one (1) share of Series A Preferred shall be equal to 131.57895 shares for voting or consent purposes, one (1) share of Series B Preferred shall be equal to one (1) share for voting or consent purposes, and one (1) share of Series C Preferred shall be equal to one (1) share for voting or consent purposes.

3. Liquidation Rights.

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Junior Stock,

(i) the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series A Preferred equal to \$105.2632 plus any accrued and unpaid dividends on the Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A Preferred held by them (the "Series A Liquidation Preference");

(ii) the holders of Series B Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series B Preferred equal to the Original Issue Price plus all declared or accrued and unpaid dividends on the Series B Preferred Stock and a premium of fifteen (15%) of the Original Issue Price per annum compounded annually from the date of purchase on each outstanding shares of Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series B Preferred held by them (the "Series B Liquidation Preference").

(iii) the holders of Series C Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series C Preferred equal to the Original

Issue Price plus all declared or accrued and unpaid dividends on the Series C Preferred Stock and a premium of fifteen (15%) of the Original Issue Price per annum compounded annually from the date of purchase on each outstanding shares of Series C Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series C Preferred held by them (the "Series C Liquidation Preference").

(b) After the payment of the full liquidation preference of the Series Preferred as set forth in Section 3(a) above, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock.

(c) The following events shall be considered a liquidation under Section 3, Section 4 and Section 6 hereof:

(i) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which in excess of fifty percent (50%) of the Company's voting power is transferred (an "Acquisition"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Company (an "Asset Transfer").

(iii) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value as determined in good faith by a majority of the Directors representing the Series Preferred. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by a majority of the Directors representing the Series Preferred.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an

appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by a majority of the Directors representing the Series Preferred.

(d) If, upon any liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series Preferred of the liquidation preference set forth in Section 3(a), then such assets shall be distributed among the holders of Series Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

4. Conversion Rights.

The Series A Preferred shall not be convertible into shares of Common Stock. The holders of the Series B Preferred and the Series C Preferred (collectively, the "Convertible Series Preferred") shall have the following rights with respect to the conversion of the Series B Preferred and the Series C Preferred, as the case may be, into shares of Common Stock (the "Conversion Rights"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Convertible Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Convertible Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Convertible Series Preferred Conversion Rate" then in effect and applicable to such series (determined as provided in Section 4(b) by the number of shares of Convertible Series Preferred being converted.

(b) **Convertible Series Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series B Preferred (the "Series B Preferred Conversion Rate") shall be the quotient obtained by dividing the Original Issue Price of the Series B Preferred by the "Series B Preferred Conversion Price," calculated as provided in Section 4(c). The conversion rate in effect at any time for conversion of the Series C Preferred (the "Series C Conversion Rate") shall be the quotient obtained by dividing the Original Issue Price of the Series C Preferred by the "Series C Conversion Price," calculated as provided in Section 4(c). Such "Series B conversion Rate" and "Series C Conversion Rate", as the case may be, shall be referred to as the "Convertible Series Preferred Conversion Rate".

(c) **Convertible Series Preferred Conversion Price.** The conversion price for the Series B Preferred shall initially be the Original Issue Price of the Series B Preferred (the "Series B Preferred Conversion Price"). The conversion price for the Series C Preferred shall initially be the Original Issue Price of the Series C Preferred (the "Series C Preferred Conversion Price"). Such initial Series B Preferred Conversion Price and Series C Conversion Price as the case may be, shall be referred to as the "Convertible Series Conversion Price" and shall be adjusted from time to time in accordance with this Section 4. All references to the Convertible Series Preferred Conversion Price herein shall mean the Convertible Series Preferred Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Convertible Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Convertible Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Convertible Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Convertible Series Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Convertible Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(e) **Adjustment for Stock Splits and Combinations.** If the Company shall at any time or from time to time after the date that the first share of Convertible Series Preferred is issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Convertible Series Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Convertible Series Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** If the Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for 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 additional shares of Common Stock ("Common Stock Equivalents") in each such event the Convertible Series Preferred Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Convertible Series Preferred Conversion Price then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents; *provided, however*, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Convertible Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Convertible Series

Preferred Conversion Price shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

(g) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Convertible Series Preferred 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 an Acquisition or Asset Transfer as defined in Section 3c or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Convertible Series Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Convertible Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(h) Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4, as a part of such capital reorganization, provision shall be made so that the holders of the Convertible Series Preferred shall thereafter be entitled to receive upon conversion of the Convertible Series Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Convertible Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Convertible Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Convertible Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(i) Sale of Shares Below Convertible Series Preferred Conversion Price.

(i) If at any time or from time to time after the Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this subsection i to have issued or sold, Additional Shares of Common Stock (as defined in subsection i(iv) below), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as defined in subsection i(iv) below) less than the then effective Convertible Series Preferred Conversion Price, then and in each such case the then existing Convertible Series Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Convertible Series Preferred Conversion Price by a fraction (i) the numerator of which shall be (A) the

number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection i(ii)), by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Convertible Series Preferred Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Convertible Series Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date, whether or not then exercised or converted.

(ii) For the purpose of making any adjustment required under this Section 4(i), the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the majority of the Directors representing the Series Preferred, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection i(iii)) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4i, if the Company issues or sells (i) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (ii) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Convertible Series Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; *provided* that if in the case of Convertible Securities the minimum amounts of such

consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; *provided* further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided* further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Convertible Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Convertible Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Convertible Series Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Series Preferred.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4i, whether or not subsequently reacquired or retired by the Company other than (A) shares of Common Stock issued upon conversion of the Convertible Series Preferred; (B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board; (C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date, (D) shares of Common Stock issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination and (E) shares of Common Stock issued pursuant to any equipment leasing arrangement, or debt financing from a bank or similar financial institution. The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 4i, into the

aggregate consideration received, or deemed to have been received by the Company for such issue under this Section 4i, for such Additional Shares of Common Stock.

(j) Certificate of Adjustment. In each case of an adjustment or readjustment of the Convertible Series Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Convertible Series Preferred, if the Convertible Series Preferred is then convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Convertible Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Convertible Series Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Convertible Series Preferred.

(k) Notices of Record Date. Upon (i) any taking by the Company 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 or other distribution, or (ii) any Acquisition (as defined in Section 3c) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 3(c), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Convertible Series Preferred at least twenty (20) days prior to the record date specified therein a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(l) Automatic Conversion.

(i) Each share of Series B Preferred and Series C Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series B Preferred Conversion Price and Series C Preferred Conversion Price, respectively, (A) at any time upon the affirmative election of the holders of at least a majority of the outstanding shares of the Convertible Series Preferred, or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price (before underwriting discounts, commissions and fees)

is at least three (3) times the Original Issue Price of the Series B Preferred (as adjusted for stock splits, dividends, recapitalizations and the like), and (ii) the net cash proceeds to the Company are at least \$15,000,000. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4d.

(ii) Upon the occurrence of the event specified in paragraph (A) above, the outstanding shares of the Convertible Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Convertible Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Convertible Series Preferred, the holders of the Convertible Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Convertible Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Convertible Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4d.

(m) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Convertible Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of the Convertible Series Preferred 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 any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

(n) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Convertible Series 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 Convertible Series Preferred. 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 Convertible Series Preferred, the Company 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.

(o) **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party

to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(p) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of the Convertible Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of the Convertible Series Preferred so converted were registered.

(q) **No Dilution or Impairment.** Without the consent of the holders of then outstanding Convertible Series Preferred as required under Section 2(c), the Company shall not amend its Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Convertible Series Preferred against dilution or other impairment.

5. Series A Preferred Redemption.

(a) At the Company's option, with approval of at least seventy-five percent (75%) of the full Board of Directors which shall include the Director representing the Series B Preferred and the Directors representing the Series C Preferred, the Company may, at any time, redeem all or fewer than all of the outstanding shares of Series A Preferred for an amount equal to the Series A Liquidation Preference (as defined in Section 3(a) herein). If the Company chooses to redeem fewer than all of the outstanding shares of Series A Preferred, the total number of shares shall be redeemed from each holder of Series A Preferred on a pro rata basis based on the number of shares of Series A Preferred then held by each holder. The date the Company chooses to redeem shares as described above shall be considered a Redemption Date for purposes of Sections 5(d), (e) and (f) below.

(b) In addition, upon the closing of a firmly underwritten public offering of the Company's securities pursuant to an effective registration statement under the Securities Act of 1933, as amended, or if the Company shall become obligated to file periodic reports under the Securities Exchange Act of 1934, as amended (the "1934 Act"), or if more than fifty percent (50%) of the Company's voting power becomes owned or controlled by a corporation or other legal entity that is obligated to file reports under the 1934 Act, or upon the sale or other similar disposition of more than 50% of the assets or technology rights of the Company for cash (other than an event which is treated as a liquidation under Section 3 above), the Company shall be obligated to redeem all outstanding Series A Preferred for an amount equal

to the Series A Liquidation Preference (as defined in Section 3(a) herein). The date this occurs shall be deemed a "Redemption Date" for purposes of Sections 5(d), (e) and (f) below.

(c) Further, if not redeemed earlier pursuant to Section 5(a) or (b) above, the Company shall also be obligated to redeem the Series A Preferred as follows:

(i) The holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred, may require the Company, by written notice given by each of such holders not more than 180 nor less than 90 days prior to the fifth anniversary of the issue date of the first shares of Series A Preferred sold by the Company to redeem the Series A Preferred in three (3) equal annual installments beginning on the fifth anniversary of the issue date of the first shares of Series B Preferred sold by the Company and ending on the date two (2) years from such first redemption date (each a "Redemption Date") to the extent the Company may lawfully do so. The Company shall effect such redemptions on the applicable Redemption Date by paying in cash in exchange for the shares of Series A Preferred to be redeemed a sum equal to the Series A Liquidation Preference as defined in Section 3(a) herein. The total amount to be paid for the Series A Preferred is hereinafter referred to as the "Redemption Price." The number of shares of Series A Preferred that the Company shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series A Preferred outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 5(a) shall be redeemed from each holder of Series A Preferred on a pro rata basis in accordance with the number of shares of Series A Preferred held by each holder on each Redemption Date.

(d) At least thirty (30) days but no more than sixty (60) days prior to the Redemption Date (the first Redemption Date in the case of a redemption under Section 5(c)), the Company shall send a notice (a "Redemption Notice") to all holders of Series A Preferred to be redeemed setting forth (A) the Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Redemption Date (including, if applicable, those to be redeemed at the option of the Company), then it shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(e) On or prior to the Redemption Date, the Company shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. The balance of any funds deposited by the Company pursuant to this Section 5(c) remaining unclaimed at the expiration of one (1) year following such Redemption Date shall be returned to the Company promptly upon its written request.

(f) On or after such Redemption Date, each holder of shares of Series A Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Company 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 such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series A Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares, provided that in the event that shares of Series A Preferred are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series A Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

6. Convertible Series Preferred Redemption.

(a) The Company shall be obligated to redeem the Convertible Series Preferred as follows:

(i) The holder of any outstanding shares of the Convertible Series Preferred may require the Company, by written notice given by such holder not more than 180 days nor less than 90 days prior to the fifth (5th) anniversary of the issue date of the first shares of Series C Preferred held by such holder, to redeem the Convertible Series Preferred in two equal annual installments on the fifth anniversary of the Original Issue Date of the Series C Preferred ("First Redemption Date"), and on the date one (1) year from the First Redemption Date ("Second Redemption Date"), to the extent it may lawfully do so. The Company shall effect such redemptions on such applicable redemption dates by paying in cash in exchange for the shares of the Convertible Series Preferred to be redeemed a sum per share of Series B Preferred and Series C Preferred equal to the Series B Liquidation Preference and the Series C Liquidation Preference, respectively. The total amount to be paid for the Convertible Series Preferred is hereinafter referred to as the "Redemption Price." The number of shares of Convertible Series Preferred that the Company shall be required to redeem on the First Redemption Date shall be equal one-half of the aggregate number of shares of Convertible Series Preferred outstanding immediately prior to the First Redemption Date and the number of shares of Convertible Series Preferred that the Company shall be required to redeem on the Second Redemption Date shall be equal to all the remaining shares of Convertible Series Preferred as of such Second Redemption Date. Shares subject to redemption pursuant to this Section 5a shall be redeemed from each holder of Convertible Series Preferred on a *pro rata* basis.

(ii) At least thirty (30) days but no more than sixty (60) days prior to the first Redemption Date, the Company shall send a notice (a "Redemption Notice") to all holders of Convertible Series Preferred to be redeemed setting forth (A) the Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at each of the First

Redemption Date and Second Redemption Date (including, if applicable, those to be redeemed at the option of the Company), then it shall redeem such shares *pro rata* (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or prior to the First Redemption Date, the Company shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such First Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section 5(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 4 hereof no later than the fifth (5th) day preceding the Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section 6(b) remaining unclaimed at the expiration of three (3) months following the Second Redemption Date shall be returned to the Company promptly upon its written request.

(c) On or after the First Redemption Date and the Second Redemption Date, as applicable, each holder of shares of Convertible Series Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Company 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 such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such the First Redemption Date and the Second Redemption Date, as applicable, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Convertible Series Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Convertible Series Preferred are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Convertible Series Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(d) In the event of a call for redemption of any shares of Convertible Series Preferred, the Conversion Rights (as defined in Section 4) for such Convertible Series Preferred shall terminate as to the shares designated for redemption at the close of business on the fifth (5th) day preceding the First Redemption Date or Second Redemption Date, as applicable, unless default is made in payment of the Redemption Price.

(e) If within one (1) year of the First Redemption Date, there is any liquidation (as defined in Section 3), dissolution, or winding up of the Company such that the amount per share that the Convertible Series Preferred would have otherwise received or been entitled to pursuant to Section 3 had such redemption not occurred is greater than the amount per share received pursuant to the redemption set forth in Section 6(a) hereof, then the and Series C

Preferred, as the case may be, shall be entitled to receive on the Second Redemption Date, the Series B Liquidation Preference and Series C Liquidation Preference, respectively, in accordance with Section 6(a) above plus the amount equal to (x) the amount that would have been received had the redemption pursuant to this Section 6 not occurred, less the (y) amount received pursuant to redemption set forth in Section 6(a).

(f) Notwithstanding any provision herein to the contrary, if, upon any redemption pursuant to Section 5(c) or Section 6(a) hereof, the assets of the Company shall be insufficient to make payment in full to the holders of Series A Preferred or Convertible Series Preferred of their respective redemption amounts as set forth in Section 5(a) and 6(a) hereof, respectively, then such assets shall be distributed among the holders of Series A Preferred and Convertible Series Preferred entitled to receive redemption payments, ratably in proportion to the full amounts to which they would otherwise be respectively entitled. In the event of any such insufficiency and until the satisfaction of any redemption amounts owed to the Convertible Series Preferred pursuant to Section 6(a), the dividends on the Convertible Series Preferred pursuant to Section 1(a) shall be increased from six percent (6%) to eight percent (8%).

7. **No Reissuance of Series Preferred.** No share or shares of Series Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

8. **No Preemptive Rights.** Stockholders shall have no preemptive rights except as granted by the Company pursuant to written agreements.

F. The voting rights of the Common Stock shall be as follows: Except as otherwise required by law or provided in this Restated Certificate, each share of Common Stock shall entitle the holder thereof to one vote on each matter submitted to a vote of the stockholders of the Corporation.

V.


A. A director of the corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

B. Any repeal or modification of this Article V shall only be prospective and shall not effect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

VI.

IN WITNESS WHEREOF, Retinal Displays, Inc. has caused this Restated Certificate of Incorporation to be signed by the President and the Secretary in Palo Alto, California this 30th day of September, 1999.

RETINAL DISPLAYS, INC.

By: 
Jonathan D. Waldern
President

ATTEST:


By: _____
Robert J. Brigham
Secretary

IN WITNESS WHEREOF, Retinal Displays, Inc. has caused this Rescued Certificate of Incorporation to be signed by the President and the Secretary in Palo Alto, California this 30th day of September, 1999.

RETINAL DISPLAYS, INC.

By: _____
Jonathan D. Waldern
President

ATTEST:

By:  _____
Robert J. Brigham
Secretary

CERTIFICATE OF MAILING UNDER 37 CFR 1.10

"Express Mail" mailing label number **EL433351748US**

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on November 4, 1999 and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, Attention: Box ASSIGNMENTS.

Very truly yours,

FOSTER PEPPER & SHEFELMAN



Sachiko Crowder
November 4, 1999



November 4, 1999

11-04-1999

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #84

Direct Phone
(206) 447-5336*Direct Facsimile*
(206) 749-1981*E-Mail*
dillj@foster.com**BY EXPRESS MAIL EL433351748US**Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Attention: Box ASSIGNMENTS

Re: Change of Name for Retinal Displays Inc.
New Corporate Name: DigiLens Inc.
Our Ref.: 90453-5

Ladies and Gentlemen:

Enclosed for filing is a copy of the Amended and Restated Certificate of Incorporation for Retinal Displays Inc., dated October 1, 1999, changing its name to DigiLens Inc. together with the required Recordation Form Cover Sheet and a check in the amount of \$40.00 to cover the recordation fees. The address of the corporation is 306 Potrero Avenue, Snyvale, CA 94086.

Please stamp the enclosed postcard with the date on which the letter is received and return it to me at your earliest convenience. Please direct all future correspondence concerning this filing to the undersigned at 1111 Third Avenue, Suite 3400, Seattle, Washington 98101.

If the filing fee is found to be insufficient for any reason, please charge such deficiency to our Deposit Account Number 06-1629.

1111 THIRD
AVENUE
Suite 3400
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98101-3299*Telephone*
(206) 447-4400
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(206) 447-9700
Website

WWW.FOSTER.COM

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AlaskaBELLEVUE
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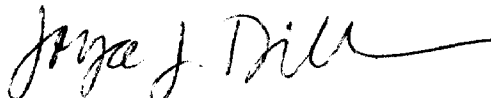
November 4, 1999

Page 2

To the best of the knowledge and belief of the undersigned, the information contained in this cover sheet is true and correct and any copy submitted is a true copy of the original document.

Very truly yours,

FOSTER PEPPER & SHEFELMAN PLLC

A handwritten signature in black ink, appearing to read "Joyce J. Dillon", with a long horizontal flourish extending to the right.

Joyce J. Dillon

Enclosures

cc: Mike Adams, DigiLens Inc.
Jim Dugan
Lisa Motherwell