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

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID # _____
- Correction of PTO Error
Reel # _____ Frame # _____
- Corrective Document
Reel # _____ Frame # _____

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
Effective Date
Month Day Year

- Merger
- Change of Name
- Other _____

Conveying Party

Mark if additional names of conveying parties attached

Name Software BuyLine, Inc.

Execution Date
Month Day Year
11 30 99

Formerly _____

- Individual General Partnership Limited Partnership Corporation Association

Other _____

Citizenship/State of Incorporation/Organization California

Receiving Party

Mark if additional names of receiving parties attached

Name iBuyLine, Inc.

DBA/AKA/TA _____

Composed of _____

Address (line 1) 1397 Charleston Road

Address (line 2) _____

Address (line 3) Mountain View

California

94043-1332

- Individual General Partnership Limited Partnership

Corporation Association

Other _____

Citizenship/State of Incorporation/Organization California

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

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FOR OFFICE USE ONLY

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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 002016 FRAME: 0831

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

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

#

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

Mark if additional numbers attached

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

Trademark Application Number(s)

Registration Number(s)

Number of Properties Enter the total number of properties involved.

#

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment: Enclosed Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

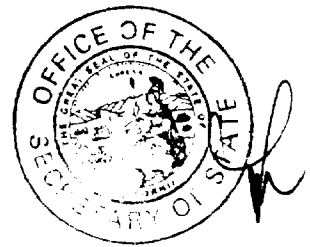
Elaine D. Ziff

12 29 99

Name of Person Signing

Signature

Date Signed



SECRETARY OF STATE

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

That the attached transcript of 24 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

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

DEC - 9 1999



Bill Jones

Secretary of State

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

NOV 30 1999

BILL JONES, Secretary of State

**CERTIFICATE OF RESTATEMENT
OF
ARTICLES OF INCORPORATION
OF
SOFTWARE BUYLINE, INC.**

Edward V. Lauing certifies that:

1. He is President and Secretary, respectively, of Software Buyline, Inc., a California corporation.

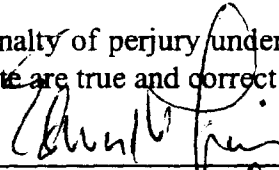
2. The Articles of Incorporation of the corporation, as amended to the date of the filing of this certificate, including amendments set forth herein but not separately filed (and with the omissions required by Section 910 of the California Corporations Code), are restated in their entirety as set forth in Exhibit "1" attached hereto and made a part hereof by this reference.

3. The Fifth Restated Articles of Incorporation set forth herein have been duly approved by the Board of Directors of the corporation.

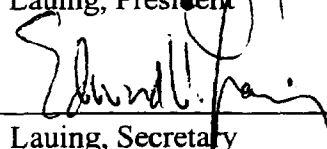
4. The amendments to the Articles of Incorporation included in the Fourth Restated Articles of Incorporation set forth herein (other than omissions required by Section 910 of the California Corporations Code) have been duly approved by the required vote of the shareholders of the corporation in accordance with Sections 902 and 903 of the California Corporations Code. The corporation has two classes of stock outstanding, 2,312,397 shares of which are Common Stock and 3,141,143, of which are Preferred Stock, consisting of 922,019 shares are Series A Preferred Stock, 1,482,221 shares are Series B Preferred Stock and 736,903 shares are Series C Preferred Stock. The number of shares voting in favor of the Fourth Restated Articles of Incorporation set forth herein equaled or exceeded the vote required. The percentage vote required was more than: (i) 66% of the outstanding shares of Common Stock; (ii) 66% of the outstanding shares of Series A Preferred Stock; (ii) 66% of the outstanding shares of Series B Preferred Stock; and (iii) 66% of the outstanding shares of Series C Preferred Stock.

The undersigned further declares under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my knowledge.

Dated November 12, 1999



Edward V. Lauing, President



Edward V. Lauing, Secretary

**FIFTH RESTATED ARTICLES OF INCORPORATION
OF
SOFTWARE BUYLINE, INC.**

ARTICLE I

The name of the corporation is iBuyLine, Inc.

ARTICLE II

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

ARTICLE III

The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. Unless applicable law otherwise provides, any amendment, repeal or modification of this Article III shall not adversely affect any right or protection of a director under this Article III that existed at or prior to the time of such amendment, repeal or modification.

ARTICLE IV

The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, by agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to the applicable limits on such excess indemnification set forth in Section 204 of the California Corporations Code. Unless applicable law otherwise provides, any amendment, repeal or modification of any provision of this Article IV shall not adversely affect any contract or other right to indemnification of an agent of the corporation that existed at or prior to the time of such amendment, repeal or modification.

ARTICLE V

This corporation is authorized to issue two classes of shares, designated "Common Stock" and "Preferred Stock," respectively, both of which shall have no par value. The number of shares of Common Stock authorized to be issued is 50,000,000 shares. The number of shares of Preferred Stock authorized to be issued is 3,152,254 shares, 922,019 of which are designated

as "Series A Preferred Stock," 1,493,332 of which are designated as "Series B Preferred Stock" and 736,903 of which are designated "Series C Preferred Stock."

ARTICLE VI

The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Common Stock are as follows:

1. **Definitions.** For purposes of this Article VI, the following definitions shall apply:

1.1 "Board" shall mean the Board of Directors of the Company.

1.2 "Company" shall mean this corporation.

1.3 "Common Stock" shall mean the Common Stock, no par value, of the Company.

1.4 "Common Stock Dividend" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.

1.5 "Dividend Rate" shall mean \$0.225 per share per annum for the Series A Preferred Stock, \$0.225 per annum for the Series B Preferred Stock and \$0.375 per annum for the Series C Preferred Stock.

1.6 "Original Issue Date" shall mean with regard to a series of Preferred Stock the date on which the first share of such series was or is hereafter issued by the Company.

1.7 "Original Issue Price" shall mean \$2.25 per share for the Series A Preferred Stock, \$2.25 per share for the Series B Preferred Stock and \$3.75 per share for the Series C Preferred Stock.

1.8 "Permitted Repurchases" shall mean the repurchase by the Company of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Company or a Subsidiary that are subject to restricted stock purchase agreements, right of first refusal and co-sale agreements, or stock option exercise agreements, under which the Company has the option to repurchase such shares: (i) at cost, upon the occurrence of certain events, such as the termination of employment or services; or (ii) at any price pursuant to the Company's exercise of a right of first refusal to repurchase such shares.

1.9 "Preferred Stock" shall mean the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock, collectively.

1.10 "Series A Preferred Stock" shall mean the Series A Preferred Stock, no par value, of the Company.

1.11 "Series B Preferred Stock" shall mean the Series B Preferred Stock, no par value, of the Company.

1.12 "Series C Preferred Stock" shall mean the Series C Preferred Stock, no par value, of the Company.

1.13 "Subsidiary" shall mean any corporation of which at least fifty percent (50%) of the outstanding voting stock is at the time owned directly or indirectly by the Company or by one or more of such subsidiary corporations.

2. Dividend Rights.

2.1 Series A Preferred Stock.

(a) Mandatory Payment of Dividends Upon Redemption. The holders of the then outstanding Series A Preferred Stock shall be entitled to receive, out of any funds and assets of the Company legally available therefor, mandatory cumulative dividends at the annual Dividend Rate for the Series A Preferred Stock, without regard to the payment of any dividends on the Common Stock, the Series B Preferred Stock or the Series C Preferred Stock and whether or not declared by the Board, upon any redemption of the Series A Preferred Stock as provided in Section 4 below; provided, however, that such dividends shall be reduced by any dividends paid to such holders pursuant to subsection 2.1(b) below. Such dividends shall accrue on each share of Series A Preferred Stock from the date on which such share of Series A Preferred Stock is issued by the Company, and shall accrue from day to day until paid. No accumulation of dividends on the Series A Preferred Stock shall bear any interest.

(b) Declared Dividends. Subject to the prior dividend rights of the Series B Preferred Stock and Series C Preferred Stock set forth herein, in each calendar year, the holders of the then outstanding Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Company legally available therefor, cumulative dividends at the annual Dividend Rate for the Series A Preferred Stock, prior and in preference to the payment of any dividends on the Common Stock in such calendar year (other than a Common Stock Dividend). No dividends (other than a Common Stock Dividend) shall be paid with respect to the Common Stock during any calendar year unless dividends in the total amount of the annual Dividend Rate for the Series A Preferred Stock shall have first been paid or declared and set apart for payment to the holders of the Series A Preferred Stock during that calendar year; provided, however, that this restriction shall not apply to Permitted Repurchases. Dividends on the Series A Preferred Stock shall not be mandatory, and no rights or interest shall accrue to the holders of the Series A Preferred Stock by reason of the fact that the Company shall fail to declare or pay dividends on the Series A Preferred Stock in the amount of the annual Dividend Rate for the Series A Preferred Stock or in any other amount in any calendar year or any fiscal year of the Company, whether or not the earnings of the Company in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part. Such dividends shall accrue on each share of Series A Preferred Stock from the date on which such share of Series A

Preferred Stock is issued by the Company, and shall accrue from day to day until paid. No accumulation of dividends on the Series A Preferred Stock shall bear any interest.

2.2 Series B Preferred Stock. Subject to the prior dividend right of the Series C Preferred Stock, in each calendar year, the holders of the then outstanding Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Company legally available therefor, noncumulative dividends at the annual Dividend Rate for the Series B Preferred Stock, prior and in preference to the payment of any dividends on the Common Stock or the Series A Preferred Stock in such calendar year (other than a Common Stock Dividend). No dividends (other than a Common Stock Dividend) shall be paid with respect to the Common Stock or the Series A Preferred Stock (except as provided in subsection 2.1(a) above) during any calendar year unless dividends in the total amount of the annual Dividend Rate for the Series B Preferred Stock shall have first been paid or declared and set apart for payment to the holders of the Series B Preferred Stock during that calendar year; provided, however, that this restriction shall not apply to Permitted Repurchases. Dividends on the Series B Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Series B Preferred Stock by reason of the fact that the Company shall fail to declare or pay dividends on the Series B Preferred Stock in the amount of the annual Dividend Rate for the Series B Preferred Stock or in any other amount in any calendar year or any fiscal year of the Company, whether or not the earnings of the Company in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part.

2.3 Series C Preferred Stock. In each calendar year, the holders of the then outstanding Series C Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Company legally available therefor, noncumulative dividends at the annual Dividend Rate for the Series C Preferred Stock, prior and in preference to the payment of any dividends on the Common Stock, the Series A Preferred Stock or the Series B Preferred Stock in such calendar year (other than a Common Stock Dividend). No dividends (other than a Common Stock Dividend) shall be paid with respect to the Common Stock, the Series A Preferred Stock or the Series B Preferred Stock (except as provided in subsection 2.1(a) above) during any calendar year unless dividends in the total amount of the annual Dividend Rate for the Series C Preferred Stock shall have first been paid or declared and set apart for payment to the holders of the Series C Preferred Stock during that calendar year; provided, however, that this restriction shall not apply to Permitted Repurchases. Dividends on the Series C Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Series C Preferred Stock by reason of the fact that the Company shall fail to declare or pay dividends on the Series C Preferred Stock in the amount of the annual Dividend Rate for the Series C Preferred Stock or in any other amount in any calendar year or any fiscal year of the Company, whether or not the earnings of the Company in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part.

2.4 Participation Rights. If, after dividends in the full preferential amount specified in this Section 2 for the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock have been paid or declared and set apart in any calendar year of the

Company, the Board shall declare additional dividends out of funds legally available therefor in that calendar year, then such additional dividends shall be declared pro rata on the Common Stock, the Series B Preferred Stock and the Series C Preferred Stock on a pari passu basis according to the number of shares of Common Stock held by such holders, where each holder of shares of Series B Preferred Stock and Series C Preferred Stock is to be treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Series B Preferred Stock and Series C Preferred Stock held by such holder pursuant to Section 6.

2.5 Non-Cash Dividends. Whenever a dividend provided for in this Section 2 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board.

3. Liquidation Rights. In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the funds and assets of the Company that may be legally distributed to the Company's shareholders (the "Available Funds and Assets") shall be distributed to shareholders in the following manner:

3.1 Series A Preferred Stock. Subject to payment in full of the liquidation preference of the Series B Preferred Stock and Series C Preferred Stock as provided below, the holders of each share of Series A Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an amount per share equal to the Original Issue Price of the Series A Preferred Stock plus all cumulative dividends on the Series A Preferred Stock (the "Series A Preference Amount"). If upon any liquidation, dissolution or winding up of the Company, and after payment in full of the preferential amount specified for the Series B Preferred Stock and Series C Preferred Stock in subsections 3.2 and 3.3, the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series A Preferred Stock of their full preferential amount described in this subsection 3.1, then all of the remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series A Preferred Stock pro rata, according to the number of outstanding shares of Series A Preferred Stock held by each holder thereof.

3.2 Series B Preferred Stock. Subject to the payment in full of the liquidation preference of the Series C Preferred Stock, the holders of each share of Series B Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior to and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock or Series A Preferred Stock, an amount per share equal to the Original Issue Price of the Series B Preferred Stock plus all declared but unpaid dividends on the Series B Preferred Stock (the "Series B Preference Amount"). If upon any liquidation, dissolution or winding up of the Company, the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series B Preferred Stock of their full preferential amount described in this subsection 3.2, then all of the

remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series B Preferred Stock pro rata, according to the number of outstanding shares of Series B Preferred Stock held by each holder thereof.

3.3 Series C Preferred Stock. The holders of each share of Series C Preferred Stock then outstanding shall be entitled to be paid out of the Available Funds and Assets, and prior to and preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, Series A Preferred Stock or Series B Preferred Stock, an amount per share equal to the Original Issue Price of the Series C Preferred Stock plus all declared but unpaid dividends on the Series C Preferred Stock (the "Series C Preference Amount"). If upon any liquidation, dissolution or winding up of the Company, the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series C Preferred Stock of their full preferential amount described in this subsection 3.3, then all of the remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series C Preferred Stock pro rata, according to the number of outstanding shares of Series C Preferred Stock held by each holder thereof.

3.4 Participation Rights. If there are any Available Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) of the Series A Preference Amount, the Series B Preference Amount and the Series C Preference Amount, then all such remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Common Stock, the Series B Preferred Stock and Series C Preferred Stock, on a pari passu basis according to the number of shares of Common Stock then held by such holders (where, for this purpose, each holder of shares of Series B Preferred Stock and Series C Preferred Stock will be deemed to hold (in lieu of their Series B Preferred Stock and Series C Preferred Stock) the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Series B Preferred Stock and Series C Preferred Stock held by such holder pursuant to Section 6).

3.5 Merger or Sale of Assets. A (i) consolidation or merger of the Company with or into any other corporation or corporations in which the holders of the Company's outstanding shares immediately before such consolidation or merger do not, immediately after such consolidation or merger, retain stock representing a majority of the voting power of the surviving corporation of such consolidation or merger; or (ii) a sale of all or substantially all of the assets of the Company, shall each be deemed to be a liquidation, dissolution or winding up of the Company as those terms are used in this Section 3. A consolidation or merger of the Company with or into any other corporation or corporations in which the Company is not the surviving entity and the holders of the Company's outstanding shares immediately before such consolidation or merger do, immediately after such consolidation or merger, retain stock representing a majority of the voting power of the surviving corporation of such consolidation or merger, shall not be deemed to be a liquidation, dissolution or winding up of the Company as those terms are used in this Section 3, and in such instance, and except as provided in subsection 4.2, provision shall be made to issue to the holders of the Company's outstanding shares stock

that has substantially the same rights, privileges and preferences as existed immediately prior to such consolidation or merger.

3.6 Non-Cash Consideration. If any assets of the Company distributed to shareholders in connection with any liquidation, dissolution or winding up of the Company are other than cash, then the value of such assets shall be their fair market value as determined by the Board, except that any securities to be distributed to shareholders in a liquidation, dissolution, or winding up of the Company shall be valued as follows:

(a) The method of valuation of securities not subject to investment letter or other similar restrictions on free marketability shall be as follows:

(i) if the securities are then traded on a national securities exchange or the Nasdaq National Market (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period ending three (3) days prior to the distribution; and

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

(iii) if there is no active public market, then the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Company.

(b) The method of valuation of securities subject to investment letter or other similar restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subparagraphs 3.6(a)(i),(ii) or (iii) of this subsection to reflect the approximate fair market value thereof, as determined in good faith by the Board.

4. Redemption.

4.1 Optional Redemption of the Series A Preferred Stock. Subject to the provisions regarding partial redemption in subsection 4.3 below, the Company may, at any time and at the option of the Board, redeem the Series A Preferred Stock in whole or in part, subject to the legal availability of funds therefor. The redemption price for each share of Series A Preferred Stock shall be the Series A Preference Amount (as defined in Section 3.1).

4.2 Automatic Redemption of Series A Preferred Stock. Subject to the terms and conditions of this subsection 4.2, to the extent that any outstanding shares of Series A Preferred Stock have not been redeemed, the Series A Preferred Stock shall automatically be redeemed upon the initial closing (the "Automatic Redemption Date") (i) of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the aggregate public offering price (before deduction of

underwriters' discounts and commissions) equals or exceeds \$15,000,000 and the public offering price per share of which equals or exceeds \$12.00 per share before deduction of underwriters' discounts and commissions (such price per share of Common Stock to be appropriately adjusted to reflect Common Stock Events as defined in subsection 6.4); or (ii) a consolidation or merger of the Company with or into any other corporation or corporations whose stock is publicly traded and where such a consolidation or merger is not deemed to be a liquidation, dissolution or winding up of the Company as those terms are used in Section 3 and the holders of the then outstanding Series A Preferred Stock are not entitled to receive stock of the surviving corporation or corporations, which stock is publicly tradable within ninety (90) days of the closing of such consolidation or merger. The redemption price for each share of Series A Preferred Stock shall be the Series A Preference Amount, and the redemption price shall be paid from the proceeds of the offering.

4.3 Partial Redemption. No redemption shall be made under this Section 4 of only a part of the then outstanding Series A Preferred Stock, unless the Company shall effect such redemption pro rata among all holders of then outstanding Series A Preferred Stock according to the number of shares held by each holder thereof on the applicable Redemption Date.

4.4 Redemption Notice. At least twenty (20) but no more than sixty (60) days prior to the date fixed for any redemption of Series A Preferred Stock (the "Redemption Date"), written notice shall be mailed by the Company, postage prepaid, to each holder of record (at the closing of business of the business day next preceding the date on which notice is given) of the Series A Preferred Stock to be redeemed, at the address last shown on the records of the Company for such holder or given by the holder to the Company for the purpose of notice or, if no such address appears or is given, at the place where the principal executive office of the Company is located, notifying such holder of the redemption to be effected, specifying the subsection hereof under which such redemption is being effected, the Redemption Date, the applicable redemption price, the number of such holder's shares of Series A Preferred Stock to be redeemed and the place at which payment may be obtained, and calling upon such holder to surrender to the Company, in the manner and at the place designated, the certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Notwithstanding the foregoing, no Redemption Notice need be given in the case of a redemption effected pursuant to subsection 4.2.

4.5 Surrender of Certificates. On or before each designated Redemption Date (or, in the case of a redemption effected pursuant to subsection 4.2, as soon as practicable after the Automatic Redemption Date), each holder of Series A Preferred Stock to be redeemed shall surrender the certificate(s) representing such shares of Series A Preferred Stock to be redeemed to the Company, in the manner and at the place designated in the Redemption Notice, if applicable, and thereupon the redemption price for such shares of Series A Preferred Stock shall be payable to the order of the person whose name appears on such certificate(s) as the owner thereof, and each surrendered certificate shall be cancelled and retired. If less than all of the

shares represented by such certificate are redeemed, then the Company shall promptly issue a new certificate representing the unredeemed shares.

4.6 Effect of Redemption. If the Redemption Notice shall have been duly given (or, in the case of a redemption effected pursuant to subsection 4.2, upon the Automatic Redemption Date), and if the redemption price is either paid or made available for payment through the deposit arrangements specified in subsection 4.7 below, then notwithstanding that the certificate(s) evidencing any of the shares of Series A Preferred Stock so called for redemption shall not have been surrendered, all dividends with respect to such shares shall cease to accrue after the Redemption Date or Automatic Redemption Date, as applicable, such shares shall not thereafter be transferred on the Company's books and all of the holders of such shares with respect to such shares shall terminate after the Redemption Date or Automatic Redemption Date, as applicable, except only the right of the holders to receive the redemption price without interest upon surrender of their certificate(s) therefor.

4.7 Deposit of Redemption Price. On or prior to the Redemption Date or the Automatic Redemption Date, as applicable, the Company may, at its option, deposit with a bank or trust company in Santa Clara County, California, having a capital and surplus of at least \$100,000,000, as a trust fund, a sum equal to the aggregate redemption price for all shares of Series A Preferred Stock called for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust company to pay, on or after the Redemption Date or Automatic Redemption Date, as applicable, the redemption price to the respective holders upon the surrender of their share certificates. From and after the date of such deposit, the shares so called for redemption shall be redeemed. The deposit shall constitute full payment of the redemption price of the shares, the shares shall be deemed to be no longer outstanding, all dividends with respect to such shares shall cease to accrue and the holders thereof shall cease to be shareholders with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the redemption price of the shares, without interest, upon surrender of their certificates therefor. Any funds so deposited and unclaimed at the end of one (1) year from the Redemption Date or Automatic Redemption Date, as applicable, shall be released or repaid to the Company, after which time the holders of shares called for redemption who have not claimed such funds shall be entitled to receive payment of the redemption price only from the Company.

5. Voting Rights.

5.1 Common Stock. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.

5.2 Series A Preferred Stock. Each holder of shares of Series A Preferred Stock shall only be entitled to vote on changes to the rights, preferences or privileges to the Series A Preferred Stock pursuant to subsection 7.1 below or for the election of directors pursuant to subsection 5.7(a) below. When voting on such matters, each holder of shares of Series A Preferred Stock shall be entitled to one (1) vote for each share thereof held.

5.3 Series B Preferred Stock. Each holder of shares of Series B Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series B Preferred Stock could be converted pursuant to the provisions of Section 6 below at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of shareholders is solicited; provided that any number of fractional shares shall be rounded down to the nearest whole share in determining the number of votes hereunder.

5.4 Series C Preferred Stock. Each holder of shares of Series C Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series C Preferred Stock could be converted pursuant to the provisions of Section 6 below at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of shareholders is solicited; provided that any number of fractional shares shall be rounded down to the nearest whole share in determining the number of votes hereunder.

5.5 General. Subject to the foregoing provisions of this Section 5, each holder of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Company (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

5.6 [intentionally omitted]

5.7 Board of Directors Election and Removal.

(a) Election. (i) The holders of the Common Stock, voting as a separate class (with cumulative voting rights in accordance with Section 708 of the California Corporations Code), shall be entitled to elect one (1) director of the Company; (ii) the holders of the Series A Preferred Stock, voting as a separate series (with cumulative voting rights in accordance with Section 708 of the California Corporations Code), shall be entitled to elect one (1) director of the Company; (iii) the holders of the Series B Preferred Stock, voting as a separate series (with cumulative voting rights in accordance with Section 708 of the California Corporations Code), shall be entitled to elect one (1) director of the Company; (iv) the holders of the Series C Preferred Stock, voting as a separate series (with cumulative voting rights in accordance with Section 708 of the California Corporations Code), shall be entitled to elect two (2) directors of the Company and (v) the holders of the Series B Preferred Stock, Series C Preferred Stock and the Common Stock, voting together and not as separate classes (with cumulative voting rights in accordance with Section 708 of the California Corporations Code), shall be entitled to elect the remaining directors of the Company.

(b) Quorum; Required Vote.

(i) Quorum. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Common Stock then outstanding, respectively, shall constitute a quorum of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Common Stock, as the case may be, for the election of directors to be elected solely by the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Common Stock, respectively. The holders of Preferred Stock and Common Stock representing a majority of the voting power of all the then outstanding shares of Preferred Stock and Common Stock shall constitute a quorum for the election of the directors to be elected jointly by the holders of the Preferred Stock and the Common Stock.

(ii) Required Vote. With respect to the election of any director or directors by the holders of the outstanding shares of a specified series, class or classes of stock given the right to elect such director or directors pursuant to subsection 5.7(a) above ("Specified Stock"), that candidate or those candidates (as applicable) shall be elected who either: (i) in the case of any such vote conducted at a meeting of the holders of such Specified Stock, receive the highest number of affirmative votes of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (ii) in the case of any such vote taken by written consent without a meeting, are elected by the unanimous written consent of the holders of shares of such Specified Stock.

(c) Vacancy. If there shall be any vacancy in the office of a director elected by the holders of any Specified Stock pursuant to subsection 5.7(a), then a successor to hold office for the unexpired term of such director may be elected by either: (i) the remaining

director or directors (if any) in office that were so elected by the holders of such Specified Stock, by the affirmative vote of a majority of such directors (or by the sole remaining director elected by the holders of such Specified Stock if there be but one), or (ii) the affirmative vote of holders of the shares of such Specified Stock that are entitled to elect such director under subsection 5.7(a).

(d) Removal. Subject to Section 303 of the California Corporations Code, any director who shall have been elected to the Board by the holders of any Specified Stock pursuant to subsection 5.7(a) or by any director or directors elected by holders of any Specified Stock as provided in subsection 5.7(c), may be removed during his or her term of office, either with or without cause, by, and only by, the affirmative vote of shares representing a majority of the voting power of all the outstanding shares of such Specified Stock entitled to vote, given either at a meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders without a meeting, and any vacancy created by such removal may be filled only in the manner provided in this subsection 5.7(d).

(e) Procedures. Any meeting of the holders of any Specified Stock, and any action taken by the holders of any Specified Stock by written consent without a meeting, in order to elect or remove a director under this subsection 5.7, shall be held in accordance with the procedures and provisions of the Company's Bylaws, the California Corporations Code and applicable law regarding shareholder meetings and shareholder actions by written consent, as such are then in effect (including but not limited to procedures and provisions for determining the record date for shares entitled to vote).

(f) Termination. Notwithstanding anything in this subsection 5.7 to the contrary, the provisions of this subsection 5.7 shall cease to be of any further force or effect immediately prior to the initial closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the aggregate public offering price (before deduction of underwriters' discounts and commissions) equals or exceeds \$15,000,000 and the public offering price per share of which equals or exceeds \$12.00 per share before deduction of underwriters' discounts and commissions (such price per share of Common Stock to be appropriately adjusted to reflect Common Stock Events as defined in subsection 6.4).

6. Conversion Rights. The outstanding shares of Series A Preferred Stock shall not be convertible into Common Stock. The outstanding shares of Series B Preferred Stock and Series C Preferred Stock shall be convertible into Common Stock as follows:

6.1 Optional Conversion.

(a) At the option of the holder thereof, each share of Series B Preferred Stock and Series C Preferred Stock shall be convertible, at any time or from time to time, into fully paid and nonassessable shares of Common Stock as provided herein.

(b) Each holder of Series B Preferred Stock or Series C Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series B Preferred Stock, Series C Preferred Stock or Common Stock, and shall give written notice to the Company at such office that such holder elects to convert the same and shall state therein the number of shares of Series B Preferred Stock or Series C Preferred Stock 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 upon such conversion and a certificate or certificates for the number of shares of Preferred Stock, if any, represented by the tendered certificate or certificates, that were not converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Series B Preferred Stock or Series C Preferred Stock 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.

6.2 Automatic Conversion.

(a) Each share of Series B Preferred Stock and Series C Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein immediately prior to the initial closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the aggregate public offering price (before deduction of underwriters' discounts and commissions) equals or exceeds \$15,000,000 and the public offering price per share of which equals or exceeds \$12.00 per share before deduction of underwriters' discounts and commissions (such price per share of Common Stock to be appropriately adjusted to reflect Common Stock Events as defined in subsection 6.4).

(b) Upon the occurrence of the event specified in subparagraph 6.2(a), the outstanding shares of Series B Preferred Stock and Series C Preferred Stock shall be converted into Common Stock automatically without the need for 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 to any holder thereof unless the certificates evidencing such shares of Series B Preferred Stock or Series C Preferred Stock, as the case may be, 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 Series B Preferred Stock and Series C Preferred Stock, the holders of Series B Preferred Stock and Series C Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series B Preferred Stock, Series C Preferred Stock

or Common Stock. 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 surrendered shares of Series B Preferred Stock or Series C Preferred Stock, as the case may be, were convertible on the date on which such automatic conversion occurred.

6.3 Conversion Price. Each share of Series B Preferred Stock and Series C Preferred Stock shall be convertible in accordance with subsection 6.1 or subsection 6.2 into the number of shares of Common Stock that results from dividing the Original Issue Price for the Series B Preferred Stock and Series C Preferred Stock, as applicable, by the conversion price for the Series B Preferred Stock or Series C Preferred Stock, as applicable, that is in effect at the time of conversion (the "Conversion Price"). The initial Conversion Price for the Series B Preferred Stock and Series C Preferred Stock shall be the Original Issue Price for the Series B Preferred Stock and Series C Preferred Stock, respectively. The Conversion Price for the Series B Preferred Stock and Series C Preferred Stock shall be subject to adjustment from time to time as provided below.

6.4 Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event (as hereinafter defined), the Conversion Price of the Series B Preferred Stock and Series C Preferred Stock, shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the respective Conversion Prices of the Series B Preferred Stock and Series C Preferred Stock in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the products so obtained shall thereafter be the respective Conversion Price of the Series B Preferred Stock and Series C Preferred Stock, as applicable. The Conversion Prices of the Series B Preferred Stock and Series C Preferred Stock shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event. As used herein, the term "Common Stock Event" shall mean (i) the issue by the Company of additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock.

6.5 Adjustments for Other Dividends and Distributions. If at any time or from time to time after the Original Issue Date the Company pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Company other than shares of Common Stock, then in each such event provision shall be made so that the holders of the Series B Preferred Stock and Series C Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Company that they would have received had their Series B Preferred Stock and Series C Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of

such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 6 with respect to the rights of the holders of the Series B Preferred Stock, the Series C Preferred Stock or with respect to such other securities by their terms.

6.6 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 Series B Preferred Stock and Series C Preferred Stock are 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 by a Common Stock Event or a stock dividend, reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 6), then in any such event each holder of Series B Preferred Stock or Series C Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series B Preferred Stock and Series C Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

6.7 Sale of Shares Below Conversion Price.

(a) Adjustment Formula. If at any time or from time to time after the Original Issue Date for the Series B Preferred Stock or Series C Preferred Stock the Company issues or sells, or is deemed by the provisions of this subsection 6.7 to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in subsection 6.4, a dividend or distribution as provided in subsection 6.5 or a recapitalization, reclassification or other change as provided in subsection 6.6, for an Effective Price (as hereinafter defined) that is less than the Conversion Price of the Series B Preferred Stock and/or the Series C Preferred Stock in effect immediately prior to such issue or sale, then, and in each such case, the Conversion Price of the Series B Preferred Stock and the Series C Preferred Stock for which Additional Shares of Common Stock are in the above cases sold for Effective Price that is less than the Conversion Price for such series of Preferred Stock shall be reduced, as of the close of business on the date of such issue or sale, to the price obtained by multiplying such Conversion Price by a fraction:

(i) The numerator of which shall be the sum of (A) the number of Common Stock Equivalents Outstanding (as hereinafter defined) immediately prior to such issue or sale of Additional Shares of Common Stock plus (B) the quotient obtained by dividing the Aggregate Consideration Received (as hereinafter defined) by the Company for the total number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold) by the Conversion Price of the Series B Preferred Stock or Series C Preferred Stock, as the case may be, in effect immediately prior to such issue or sale; and

(ii) The denominator of which shall be the sum of (A) the number of Common Stock Equivalents Outstanding immediately prior to such issue or sale plus (B) the number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold).

(b) Certain Definitions. For the purpose of making any adjustment required under this subsection 6.7:

(i) “Additional Shares of Common Stock” shall mean all shares of Common Stock issued by the Company, whether or not subsequently reacquired or retired by the Company, other than: (A) shares of Common Stock issued upon conversion of Series B Preferred Stock and Series C Preferred Stock (or warrants or rights therefor); (B) up to a total of 2,020,704 shares of Common Stock (or options, warrants or rights therefor) now or hereafter issued to employees, officers, or directors of, or contractors, vendors, consultants or advisers to, or investors in, the Company or any Subsidiary pursuant to stock purchase or stock option plans, stock bonuses or awards, warrants, contracts, licenses or other arrangements (including settlement agreements) that are approved by the Board (such number of shares to be calculated net of any repurchases of such shares by the Company and net of any such expired or terminated options, warrants or rights and to be proportionally adjusted to reflect any subsequent Common Stock Event); (C) up to a total of 70,000 shares of Common Stock (or options therefor) issued to Kairdos LLC; (D) up to a total of 52,000 shares of Common Stock (or options, warrants or rights therefor) issued or issuable to RSA Data Security, Inc.; (E) up to 11,111 shares of Series B Preferred Stock issued or issuable pursuant to that certain Warrant to Purchase Shares of Series B Stock issued to Phoenix Leasing Incorporated, (F) Common Stock purchase warrants to purchase up to 120,000 shares of Common Stock issued upon conversion to Series C Preferred Stock to holders of certain Convertible Promissory Notes of the Company and all shares of Common Stock issued or issuable upon exercise of such warrants and (G) all shares of the Company’s Common Stock and Preferred Stock (and warrants therefor) to be issued in connection with the issuance by the Company under a Secured Convertible Promissory Note and Warrant Purchase Agreement to be entered into by the Company and Acclaim Entertainment, Inc. after the filing of these Articles of Incorporation, pursuant to which the Company will issue up to \$3 million in original principal amount of promissory notes convertible into shares of Common Stock of the Company and warrants to acquire additional shares of Common Stock of the Company and any amendment to such agreement, such notes or such warrants approved by the Board.

(ii) The “Aggregate Consideration Received” by the Company for any issue or sale (or deemed issue or sale) of securities shall (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of any reasonable or customary underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and 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 Board; and (C) if Additional Shares of Common Stock, Convertible Securities 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 that covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options;

(iii) “Common Stock Equivalents Outstanding” shall mean the number of shares of Common Stock that is equal to the sum of (A) all shares of Common Stock of the Company that are outstanding at the time in question, plus (B) all shares of Common Stock of the Company issuable upon conversion of all shares of Preferred Stock or other Convertible Securities that are outstanding at the time in question, plus (C) all shares of Common Stock of the Company that are issuable upon the exercise of Rights or Options that are outstanding at the time in question assuming the full conversion or exchange into Common Stock of all such Rights or Options that are Rights or Options to purchase or acquire Convertible Securities into or for Common Stock;

(iv) “Convertible Securities” shall mean stock or other securities convertible into or exchangeable for shares of Common Stock;

(v) 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 subsection 6.7, into the Aggregate Consideration Received, or deemed to have been received, by the Company under this subsection 6.7, for the issue of such Additional Shares of Common Stock; and

(vi) “Rights or Options” shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

(c) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price of the Series B Preferred Stock or Series C Preferred Stock or both required under this subsection 6.7, if the Company issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect for the Series B Preferred Stock or the Series C Preferred Stock, or both, then the Company shall be deemed to have issued, at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of such Rights, Options or Convertible Securities upon their issuance and to have received, as the Aggregate Consideration Received 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 in full

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 or exchange thereof; provided that:

(i) if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, then the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses;

(ii) if the minimum amount of consideration payable to the Company upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events other than by reason of antidilution or similar protective adjustments, then the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; and

(iii) if the minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities.

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price of the Series B Preferred Stock or Series C Preferred Stock or both, as applicable, as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price that would have been in effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that were actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such 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 all such Convertible Securities actually converted or exchanged, 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 or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series B Preferred Stock and Series C Preferred Stock.

6.8 Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price of the Series B Preferred Stock or Series C Preferred Stock, the Company, at its expense, shall cause its Chief Financial Officer to 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 the Preferred Stock at the holder's address as shown in the Company's books.

6.9 Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of Series B Preferred Stock or Series C Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion.

6.10 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 Series B Preferred Stock and Series C Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred Stock and Series C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock and Series C Preferred Stock, 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.

6.11 Notices. Any notice required by the provisions of this Section 6 to be given to the holders of shares of the Series B Preferred Stock or Series C Preferred Stock shall be deemed given upon the earlier of actual receipt or five (5) days after deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Company.

6.12 No Impairment. The Company shall not avoid or seek 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 Series B Preferred Stock and Series C Preferred Stock against impairment.

6.13 Payment of Taxes. The Company will pay all taxes and other governmental charges (other than taxes based on income) that may be imposed in respect of the issue or delivery of any shares of Common Stock (or other securities or property) upon conversion of the Series B Preferred Stock and Series C Preferred Stock. The Company shall not, however, be required to pay any tax that might be payable in respect of any transfer involved in the issue and delivery of any shares of Common Stock in a name other than that in which the

shares of the Series B Preferred Stock and Series C Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

7. Restrictions and Limitations.

7.1 Series A Preferred Stock Protective Provisions. So long as fifty percent (50%) of the original shares of Series A Preferred Stock remain outstanding, the Company shall not, without the approval, by vote or written consent, of the holders of sixty-six percent (66%) of the Series A Preferred Stock then outstanding, voting as a single series, amend its Articles of Incorporation in any manner that would alter or change any of the rights, preferences, privileges or restrictions of the Series A Preferred Stock.

7.2 Series B Preferred Stock Protective Provisions. So long as fifty percent (50%) of the original shares of Series B Preferred Stock remain outstanding, the Company shall not, without the approval, by vote or written consent, of the holders of sixty-six percent (66%) of the Series B Preferred Stock then outstanding, voting as a single series:

(1) amend or waive its Articles of Incorporation in any manner that would alter or change any of the rights, preferences, privileges or restrictions of the Series B Preferred Stock;

(2) reclassify any outstanding shares of securities of the Company into shares having rights, preferences or privileges senior to or on a parity with the Series B Preferred Stock;

(3) authorize or issue any other stock having rights or preferences senior to or on a parity with the Series B Preferred Stock as to dividend rights or liquidation preferences;

(4) increase or decrease authorized number of shares of the Series B Preferred Stock;

(5) merge or consolidate the Company or any Subsidiary with or into any corporation if such merger or consolidation would result in the shareholders of the Company immediately prior to such merger or consolidation holding less than a majority of the voting power of the stock of the surviving corporation immediately after such merger or consolidation;

(6) sell all or substantially all of the Company's or any Subsidiary's assets, or sell, lease, assign, transfer, encumber, license or otherwise convey all or any significant portion of the proprietary technology or trade secrets of the Company or any Subsidiary, in a single transaction or series of related transactions;

(7) declare or pay any dividends (other than dividends payable solely in shares of its own Common Stock) on or declare or make any other distribution (other than Permitted Repurchases), directly or indirectly, on account of any shares of Common Stock now or hereafter outstanding;

(8) purchase, redeem or otherwise acquire (or pay into, or set aside for, a sinking fund for such purpose) any Common Stock or any other equity security of the Company; provided, however, that this restriction shall not apply to Permitted Repurchases;

(9) authorize or issue, or obligate itself to issue, any equity security or convertible debt senior to, or on a parity with, the Series B Preferred Stock as to dividend, liquidation preferences, voting rights, registration rights or otherwise;

(10) effect any reclassification or other change of any capital stock or any recapitalization;

(11) effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company (calculated as if such transactions had occurred) is transferred or attached to newly issued securities or instruments;

(12) permit any Subsidiary to issue or sell, or obligate itself to issue or sell, except to the Company or any Subsidiary wholly-owned by the Company, any stock of such Subsidiary;

(13) file a petition in voluntary bankruptcy, seek relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction or consent to the filing of any such petition against it under any such law; or

(14) make any assignment for the benefit of creditors, admit in writing the inability of the Company to pay its debts generally as they become due or consent to the appointment of a receiver, trustee, liquidator of the Company or of its property.

7.3 Series C Preferred Stock Protective Provisions. So long as twenty-five percent (25%) of the Series C Preferred Stock issued under the Purchase Agreement remain outstanding, the Company shall not, without the approval, by vote or written consent, of the holders of sixty-six percent (66%) of the Series C Preferred Stock then outstanding, voting as a single series:

(1) amend or waive its Articles of Incorporation or bylaws in any manner that would alter or change any of the rights, preferences, privileges or restrictions of the Series C Preferred Stock;

(2) reclassify any outstanding shares of securities of the Company into shares having rights, preferences or privileges senior to or on a parity with the Series C Preferred Stock;

(3) authorize or issue any other stock having rights or preferences senior to or on a parity with any of Series C Preferred Stock as to dividend rights or liquidation preferences;

(4) increase or decrease authorized number of shares of the Series C Preferred Stock.

(5) merge or consolidate the Company or any Subsidiary with or into any corporation if such merger or consolidation would result in the shareholders of the Company immediately prior to such merger or consolidation holding less than a majority of the voting power of the stock of the surviving corporation immediately after such merger or consolidation;

(6) sell all or substantially all of the Company's or any Subsidiary's assets, or sell, lease, assign, transfer, encumber, license or otherwise convey all or any significant portion of the proprietary technology or trade secrets of the Company or any Subsidiary, in a single transaction or series of related transactions;

(7) declare or pay any dividends (other than dividends payable solely in shares of its own Common Stock) on or declare or make any other distribution (other than Permitted Repurchases), directly or indirectly, on account of any shares of Common Stock now or hereafter outstanding;

(8) purchase, redeem or otherwise acquire (or pay into, or set aside for, a sinking fund for such purpose) any Common Stock or any other equity security of the Company; provided, however, that this restriction shall not apply to Permitted Repurchases;

(9) authorize or issue, or obligate itself to issue, any equity security or convertible debt senior to, or on a parity with, the Series C Preferred Stock as to dividend, liquidation preferences, voting rights, registration rights or otherwise;

(10) effect any reclassification or other change of any capital stock or any recapitalization;

(11) effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company (calculated as if such transactions had occurred) is transferred or attached to newly issued securities or instruments;

(12) permit any Subsidiary to issue or sell, or obligate itself to issue or sell, except to the Company or any Subsidiary wholly-owned by the Company, any stock of such Subsidiary;

(13) file a petition in voluntary bankruptcy, seek relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction or consent to the filing of any such petition against it under any such law; or

(14) make any assignment for the benefit of creditors, admit in writing the inability of the Company to pay its debts generally as they become due or consent to the appointment of a receiver, trustee, liquidator of the Company or of its property.

8. Miscellaneous

8.1 No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Company by reason of purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Company shall be authorized to issue.

8.2 Consent to Certain Transactions. Each holder of shares of Preferred Stock shall, by virtue of its acceptance of a stock certificate evidencing Preferred Stock, be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code, to all Permitted Repurchases.

