

05-23-2000



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GPR/FINANCE

101364830

FORM COVER SHEET  
TRADEMARKS ONLY

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

Submission Type

5-1-00

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

Merger  
Effective Date  
Month Day Year

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of conveying parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual  General Partnership  Limited Partnership  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.)

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

05/22/2000 DNGUYEN 00000169 200821 75752516

FOR OFFICE USE ONLY

01 FC:481 40.00 CH  
02 FC:482 50.00 CH

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: 002076 FRAME: 0867

**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

(214) 969-2582

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.)

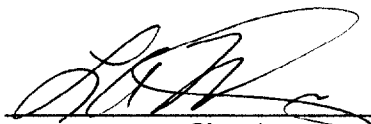
Deposit Account Number: #

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.

Lee Ann Wheelis  
Name of Person Signing

  
Signature

5/1/00  
Date Signed

Office of the Secretary of State

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"GIVE3 INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "WINFIRE, INC." UNDER THE NAME OF "WINFIRE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE SIXTEENTH DAY OF DECEMBER, A.D. 1999, AT 12 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, reading "Edward J. Freel".

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Edward J. Freel, Secretary of State

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991542759

AUTHENTICATION: 0146145  
DATE: 12-16-99

TRADEMARK  
REEL: 002076 FRAME: 0869

**CERTIFICATE OF OWNERSHIP AND MERGER****MERGING****GIVE3 INC.****INTO****WINFIRE, INC.**

Give3 Inc., a corporation organized and existing under the laws of the State of California,

DOES HEREBY CERTIFY:

FIRST: That this corporation was incorporated on the 15<sup>th</sup> day of March, 1999, pursuant to the General Corporation Law of the State of California

SECOND: That this corporation owns all of the issued and outstanding shares of each class of the capital stock of Winfire, Inc., a corporation incorporated on the 10<sup>th</sup> day of November, 1999, pursuant to the General Corporation Law of the State of Delaware.

THIRD: That this corporation -- by the attached resolutions of its Board of Directors, duly adopted by the unanimous written consent of its members and filed with the minutes of the Board on the 2nd day of December, 1999 -- determined to and did merge itself with and into Winfire, Inc., pursuant to Section 253 of the General Corporation Law of the State of Delaware and pursuant to Section 1110 of the General Corporation Law of the State of California.

FOURTH: That Winfire, Inc., a Delaware corporation, shall be the surviving corporation of the merger.

FIFTH: That the proposed merger has been adopted, approved, certified, executed, ratified, and acknowledged by Give3 Inc.'s Board of Directors alone without the approval of the shareholders in accordance with the provisions of Section 1110 of the California General Corporations Law.

SIXTH: Anything herein or elsewhere to the contrary notwithstanding, this merger may be amended or terminated and abandoned-by the Board of Directors of Give3 Inc. at any time prior to the date of filing the merger with the Secretary of State.

IN WITNESS WHEREOF, said Give3 Inc. has caused this Certificate to be signed by David A. Kopp, its President and attested by Richard Shields, its Secretary, this 2<sup>nd</sup> day of December, 1999.

BY

  
\_\_\_\_\_  
David A. Kopp, President

ATTEST:

BY

  
\_\_\_\_\_  
Richard Shields, Secretary

02345 00001 DALLAS 1062574.2

**TRADEMARK**  
**REEL: 002076 FRAME: 0870**

**GIVE3 INC.****Unanimous Consent of Directors  
in lieu of Special Meeting**

The undersigned, being all of the members of the Board of Directors of Give3 Inc. d/b/a WinFire, Inc., a California corporation (the "Corporation"), hereby waive any and all requirements for calling, giving notice of, and holding a special meeting of the Board of Directors of the Corporation and, in lieu of such special meeting and pursuant to Section 307(b) of the General Corporation Law of California, hereby consent to the adoption of the following resolutions:

**Regarding the Merger of Give3 Inc. d/b/a WinFire, Inc. with and into Winfire, Inc.**

WHEREAS, the Corporation owns 100% of the issued and outstanding capital stock in Winfire, Inc., a Delaware corporation qualified to transact business in California ("Winfire");

WHEREAS, it has been proposed that the Corporation merge with and into Winfire, with Winfire being the surviving corporation in such merger (the "Merger");

WHEREAS, pursuant to the Merger, capital stock in Winfire shall be issued pro rata on a one-to-one basis, within each class and series, to the holders of issued and outstanding capital stock in the Corporation, as more fully described in that certain Agreement and Plan of Merger dated as of December 2<sup>nd</sup>, 1999, by and between the Corporation and Winfire (the "Plan"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, after careful consideration by the Board of Directors, the conclusion has been reached that the Merger under the terms and conditions set forth in the Plan is in the best interests of the Corporation and its shareholders;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors in its good faith, best business judgment deems it advisable and in the best interests of the Corporation and its shareholders that the Corporation be merged with and into Winfire, with Winfire being the surviving corporation in the Merger, and hereby approves the Merger, substantially upon the terms and provisions and subject to the conditions set forth in the Plan.

RESOLVED FURTHER, that the form of and all the terms, provisions and conditions contained in the Plan are hereby approved in all respects.

RESOLVED FURTHER, that the President of the Corporation is hereby authorized, in the name and on behalf of the Corporation, to execute and deliver the Plan, substantially in the form submitted to and approved hereby, with such changes therein or revisions thereto as he may

in his sole and absolute discretion approve, such approval to be conclusively evidenced by the execution and delivery of the Plan as so changed or revised.

RESOLVED FURTHER, that the proper officers of the Corporation be and they hereby are directed (A) to make and execute a Certificate of Ownership and Merger for each of California and Delaware (a copy of which was previously provided to the undersigned for their review), each such Certificate shall contain: (i) a copy of the resolutions to merge the Corporation with and into Winfire, with Winfire surviving and assuming the Corporation's liabilities; (ii) the obligations, and the date of adoption thereof, and (iii) such changes or revisions as such officer may in his sole and absolute discretion approve, such approval to be conclusively evidenced by the execution and delivery of the Certificates of Ownership as so changed or revised and (B) to cause each of such Certificates to be filed with the Secretary of State of California and Delaware and to do all acts and things whatsoever which may be in any way necessary or proper to effect said merger.

RESOLVED FURTHER, that the proper officers of this corporation be and they hereby are directed to notify each shareholder of record of the Corporation entitled to such notice, that said Certificates of Ownership and Merger have become effective.

RESOLVED FURTHER, that the proper officers of the Corporation are hereby authorized and directed, in the name and on behalf of the Corporation, to take or cause to be taken all such further action and to execute and deliver all such further agreements, certificates, and other instruments and documents of every character as such officers deem necessary, advisable, or appropriate to carry out and consummate the Merger in accordance with the Plan as finally executed, delivered and amended in accordance with these resolutions, the California General Corporation Law, and the Delaware General Corporation Law.

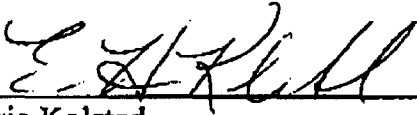
#### **Regarding Prior Actions**

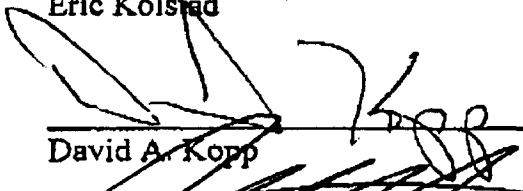
RESOLVED, that all acts heretofore taken or performed by the proper officers, employees and agents of the Corporation in connection with the resolutions set forth above be, and the same hereby are, ratified, approved and confirmed as the acts of the Corporation to the same extent as if each such act had been submitted to and authorized by this Board of Directors prior to its performance.


#### **Regarding Further Authorization**


RESOLVED, that each of the proper officers of the Corporation is hereby authorized and directed to take or cause to be taken all such further action and to sign, execute, acknowledge, certify, deliver, accept, record and file all such further instruments, in the name and on behalf of the Corporation, as in their judgment shall be necessary, desirable or advisable in order to carry out the intent, and to accomplish the purposes, of the foregoing resolutions, any such officer's execution and delivery for or in the name and on behalf of the Corporation of any such instrument or document to be conclusive evidence that such officer did so deem any such instrument or document to be necessary or desirable to effectuate the transactions contemplated by the foregoing resolutions.

2nd IN WITNESS WHEREOF, the undersigned have executed this consent as of the day of December, 1999.

  
\_\_\_\_\_  
Eric Kolstad

  
\_\_\_\_\_  
David A. Kopp

  
\_\_\_\_\_  
Chad Steelberg

  
\_\_\_\_\_  
Ryan Steelberg

**EXHIBIT A****AGREEMENT AND PLAN OF MERGER**

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), executed as of the 2nd day of December, 1999, by and between Give3 Inc. d/b/a WinFire, Inc., a California corporation ("Give3"), and Winfire, Inc., a Delaware corporation qualified to do business in California ("Winfire");

**WITNESSETH:**

WHEREAS, the Board of Directors of each of Give3 and Winfire, in their respective good faith, best business judgments deem it in the best interests of Give3 and Winfire that, for various business reasons, Give3 be merged with and into Winfire, with Winfire being the surviving entity, in accordance with the laws of the State of California and the laws of the State of Delaware;

NOW, THEREFORE, in consideration of the premises, mutual covenants, conditions, terms and provisions set forth in this Agreement, Give3 and Winfire do hereby agree as follows:

**ARTICLE I  
MERGER OF GIVE3  
WITH AND INTO WINFIRE**

Give3 will be merged with and into Winfire in accordance with, as applicable, Section 1110 of the California General Corporation Law and Section 253 of the Delaware General Corporation Law, with the effective date (the "Effective Date") of such merger to be effective on filing. Winfire will be the surviving corporation in the Merger (the "Surviving Corporation", whenever reference is made to it as of the Effective Date or thereafter), and will continue both (i) to use its present corporate name and (ii) to be governed by and incorporated in accordance with the laws of the State of Delaware.

**ARTICLE II  
EFFECT OF MERGER**

The Merger shall in all respects have the effects provided for in Section 1110 of the California General Corporation Act and Section 253 of the General Corporation Law of the State of Delaware, with all rights and obligations of Give3 being allocated to the Surviving Corporation. Without limiting the generality of the foregoing, in addition to the effects hereinafter set forth, on the Effective Date, the separate existence of Give3 will cease and the Surviving Corporation (the separate corporate existence and corporate name of which shall continue unimpaired by the Merger) will immediately (i) succeed, without other transfer, to all of the assets, properties, rights and claims of Give3 and (ii) be subject to all of the debts, duties, obligations and liabilities of Give3 in the same



manner and to the same extent as if such had been incurred by the Surviving Corporation itself. Neither the rights of creditors with respect to Give3 nor any liens upon the assets or properties of Give3 will be impaired by the Merger. Any lawsuit, proceeding or claim pending or existing by or against Give3 may be prosecuted or continued as if the Merger had not occurred or, alternatively, the Surviving Corporation may be substituted for Give3 with respect to any such lawsuit, proceeding or claim.

### **ARTICLE III TREATMENT OF SHARES**

On the Effective Date:

(i) (a) Each share of Series A Common Voting Stock, \$.001 par value per share, of Give3 which is issued and outstanding immediately prior to the effective time of the Merger shall by virtue of the Merger be changed and converted into one fully paid and non-assessable share of Series A Common Voting Stock of Winfire, \$.001 par value per share (the "Series A Common"); (b) each share of Series B Common Voting Stock, \$.001 par value per share, of Give3 which is issued and outstanding immediately prior to the effective time of the Merger shall by virtue of the Merger be changed and converted into one fully paid and non-assessable share of Series B Common Voting Stock of Winfire, \$.001 par value per share (the "Series B Common"); and (c) each share of Series A Preferred Stock, \$.001 par value per share, of Give3 which is issued and outstanding immediately prior to the effective time of the Merger shall by virtue of the Merger be changed and converted into one fully paid and non-assessable share of Series A Preferred Stock of Winfire, \$.001 par value per share (the "Series A Preferred");

(ii) Each share of Give3 Series A Common, Series B Common, and Series A Preferred, which is issued but not outstanding and is held by Give3 as treasury stock immediately prior to the Effective Date, if any, shall by virtue of the Merger be automatically canceled without payment of any consideration therefor; and

(iii) Each share of Winfire Series A Common, Series B Common, and Series A Preferred issued and outstanding immediately prior to the Effective Date, including without limitation the one share of Series A Common Voting Stock held by Give3, shall be canceled and retired and shall cease to exist.

### **ARTICLE IV CORPORATE AUTHORIZATION**

This Agreement and the Merger shall be authorized by Give3 and Winfire as provided by the applicable laws of the State of California and the State of Delaware. If this Agreement is duly authorized and adopted by such corporations, this Agreement shall be executed, filed and recorded in accordance with the laws of the State of California and the State of Delaware as soon as practicable.

**ARTICLE V  
CERTIFICATE OF INCORPORATION**

The Certificate of Incorporation of Winfire as in effect immediately prior to the Effective Date shall be and continue to be the Certificate of Incorporation of the Surviving Corporation.

**ARTICLE VI  
CERTIFICATE OF DESIGNATION OF SERIES A PREFERRED**

The Certificate of Designation for Series A Preferred of Winfire as in effect immediately prior to the Effective Date shall be and continue to be the Certificate of Designation for Series A Preferred of the Surviving Corporation.

**ARTICLE VII  
BYLAWS, OFFICERS AND DIRECTORS**

The Bylaws of Winfire, as existing immediately prior to the Effective Date, will continue in full force and effect as the Bylaws of the Surviving Corporation, until such Bylaws are thereafter modified, amended or repealed in accordance with the laws of the State of Delaware and the applicable provisions of such Bylaws. The officers and directors of Winfire immediately prior to the Effective Date will continue after the Merger to serve as the officers and directors of the Surviving Corporation, until such time as the successor of each such officer or director is chosen and qualified or until his or her earlier death, resignation, retirement, disqualification or removal from office.

**ARTICLE VIII  
SERVICE OF PROCESS**

The Surviving Corporation may be served with process in the State of California in any proceeding for enforcement of any obligation of Give3, as well as for enforcement of any obligation of the Surviving Corporation arising from the Merger, and in any proceeding for the enforcement of the rights of dissenting shareholders of Give3 and it does hereby irrevocably appoint the Secretary of State of California as its agent to accept service of process in any such suit or other proceeding. A copy of such process shall be mailed to each of the following: (1) Give3 Inc., c/o Winfire, Inc., Attention: President, 4675 MacArthur Court, Suite 1400, Newport Beach, CA 92660, and (2) Give3 Inc., co Thompson & Knight, L.L.P, Attention: J. Holt Foster, III, 1700 Pacific Avenue, Suite 3300, Dallas, Texas 75201.

**ARTICLE IX  
ABANDONMENT**


At any time prior to the Effective Date of the Merger, this Agreement may be terminated and abandoned by the Board of Directors of any of the constituent corporations to this Agreement, notwithstanding favorable action on the Merger by the shareholders of all or any of such constituent corporations.

IN WITNESS WHEREOF, Give3 and Winfire have caused this Agreement to be executed as of the date first above written.

**GIVE3 INC.**, a Delaware corporation

By:   
David A. Kopp, President

**WINFIRE, INC.**, a California corporation

By:   
David A. Kopp, President

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