

02-14-2001

FORM PTO-1594  
(Rev. 6-93)



3 SHEET  
Y

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

To the Honorable Commissioner of I

101614834

ached original documents or copy thereof.

1. Name of conveying party(ies):

Replay Networks, Inc.  
1945 Charleston Road  
Mountain View, CA 94043

*from  
MVP  
2.12.01*

- Individual(s)       Association
- General Partnership       Limited Partnership
- Corporation-State California
- Other \_\_\_\_\_

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

3. Nature of conveyance:

- Assignment       Merger
- Security Agreement       Change of Name
- Other \_\_\_\_\_

Execution Date: January 18, 2000

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

Name: Replay TV, Inc.

Internal Address: \_\_\_\_\_

Street Address: 1945 Charleston Road

City: Mountain View      State: CA      ZIP 94043

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State California
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes       No  
(Designation must be a separate document from Assignment).  
Additional name(s) & address(es) attached?  Yes       No

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)

75/531,929; 75/701,971; 75/701,968; 75/554,432

B. Trademark Registration No.(s)

Additional numbers attached?  Yes       No

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

Name: Cooley Godward LLP

Internal Address: Attn: April M. Piercey, CLA

Street Address: 5 Palo Alto Square

City: Palo Alto      State: CA      ZIP 94306

6. Total number of applications and registration involved: 4

7. Total fee (37 CFR 3.41):..... \$115.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 03-3115

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

RECEIVED  
FEB 13 PM 2 26  
ASSIGNMENT SERVICES  
DIVISION

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02 FC:482 75.00 OP

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

*[Handwritten Signature]*  
\_\_\_\_\_  
April M. Piercey, CLA

February 9, 2001

Date

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

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

# State of California



## SECRETARY OF STATE

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

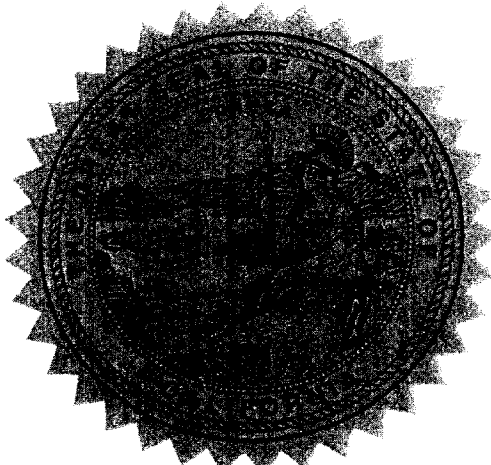
That the attached transcript of 54 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

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

JAN 24 2001

*Bill Jones*

Secretary of State



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FILED *Bjm*

In the office of the Secretary of State  
of the State of California

2034330

JAN 18 2000

**SIXTH AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

OF

*Bill Jones*  
BILL JONES, Secretary of State

**REPLAY NETWORKS, INC.**

The undersigned, Earl H. LeMasters III and Mark A. Medearis, hereby certify that:

1. They are the duly elected and acting Chief Executive Officer and Secretary, respectively, of Replay Networks, Inc., a California corporation.
2. The Articles of Incorporation of this corporation shall be amended and restated to read in full as follows:

**“ARTICLE I**

The name of this corporation is ReplayTV, Inc. (the “Corporation”).

**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**

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares which the Corporation is authorized to issue is 110,077,301 shares, each with a par value of \$0.001 per share. 75,000,000 shares shall be Common Stock and 35,077,301 shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by these Sixth Amended and Restated Articles of Incorporation may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated “Series A Preferred Stock” and shall consist of 2,494,070 shares. The second series of Preferred Stock shall be designated “Series B Preferred Stock” and shall consist of 2,580,644 shares. The third series of Preferred Stock shall be designated “Series C Preferred Stock” and shall consist of 3,162,592 shares. The fourth series of Preferred Stock shall be designated “Series D Preferred Stock” and shall consist of 10,200,000 shares. The fifth series of Preferred Stock shall be designated “Series E Preferred Stock” and shall consist of 7,639,995 shares. The sixth series of Preferred Stock shall be designated “Series F Preferred Stock” and shall consist of 9,000,000 shares. The rights, preferences, privileges and restrictions granted to and imposed on the

Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock are as set forth below in this Article III(B).

1. **Dividend Provisions.** Subject to the rights of series of Preferred Stock that may from time to time come into existence, the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, on a pro rata basis at the rate of (i) \$0.00884 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series A Preferred Stock, (ii) \$0.0248 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series B Preferred Stock, (iii) \$0.0505915 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series C Preferred Stock, (iv) \$0.062 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series D Preferred Stock, (v) \$0.60 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series E Preferred Stock and (vi) \$0.88 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series F Preferred Stock, payable quarterly when, as and if declared by the Board of Directors. No dividends shall be paid in any calendar year on any share of Common Stock unless a full dividend pursuant to the above provisions of this Section 1 is paid in such year with respect to all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock in an amount for each such share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock together with an amount equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock could then be converted. Such dividends shall not be cumulative.

2. **Liquidation.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance herewith, the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of

Common Stock by reason of their ownership thereof, an amount per share equal to (i) \$0.1105 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A Preferred Stock then held by them, (ii) \$0.31 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series B Preferred Stock then held by them, (iii) \$0.6323925 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series C Preferred Stock then held by them, (iv) \$0.775 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series D Preferred Stock then held by them, (v) \$7.50 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series E Preferred Stock held by them and (vi) \$11.00 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series F Preferred Stock held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance herewith, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) above and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence in accordance herewith, if assets remain in the Corporation, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on the number of shares of Common Stock held by each.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (B) a sale, lease, license or other conveyance of all or substantially all of the assets of the Corporation, unless the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration in the acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity in

approximately the same relative percentages after such acquisition or sale as before such acquisition or sale.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

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

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

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

(3) If there is no public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(c)(ii)(A) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, the record date for determining shareholders entitled to vote (if applicable) and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

3. **Redemption.**

(a) **Date and Amount.** On or at any time after (i) February 15, 2004, or (ii) the receipt by the Corporation in writing from the holders of not less than 66 2/3% of the Preferred Stock then outstanding of their consent to redemption hereunder, the Corporation may at any time it may lawfully do so, at the option of the Board of Directors, redeem in whole or in part the Preferred Stock by paying in cash therefor (i) \$0.1105 per share for each share of Series A Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), (ii) \$0.31 per share for each share of Series B Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), (iii) \$0.6323925 per share for each share of Series C Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), (iv) \$0.775 per share for each share of Series D Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), (v) \$7.50 per share for each share of Series E Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) and (vi) \$11.00 per share for each share of Series F Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), plus in each case an amount equal to all declared but unpaid dividends on the outstanding shares of such Preferred Stock (such total amount per share is hereinafter referred to as the "Redemption Price").

(b) **Partial Redemption.** In the event of any redemption of only a part of the then outstanding shares of the Preferred Stock, the Corporation shall effect such redemption pro rata among all the holders of Preferred Stock (as to the number of shares, series by series, held on the date of notice of redemption).

(c) **Notice and Procedure.** At least 45 days prior to the date fixed for any redemption of the Preferred Stock (hereinafter referred to as the "Redemption Date"), written notice shall be mailed, postage prepaid, to each holder of record of the Preferred Stock, at the holder's post office address last shown on the records of the Corporation (provided, however, that in the case of non-domestic investors, written notice shall instead be delivered by confirmed fax at the holder's fax number last shown on the records of the Corporation within the same time period), notifying such holder of the election of the Corporation to redeem such shares, specifying the Redemption Date and the date on which such holder's Conversion Rights (as

hereinafter defined) as to such shares terminate, which date shall be no earlier than five business days prior to the Redemption Date, and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the holder's certificate or certificates representing the shares to be redeemed (such notice is hereinafter referred to as the "Redemption Notice"). On or prior to the Redemption Date, each holder of the Preferred Stock to be redeemed shall surrender his or her certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the aggregate Redemption Price (the Redemption Price per share to be redeemed multiplied by the number of shares to be redeemed) for the shares to be redeemed shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In calculating the aggregate Redemption Price, the number of shares shall be reduced by the number of shares which have been converted pursuant to Section 4 hereof between the date of notice of redemption and the date on which Conversion Rights to such shares terminate. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the Redemption Date, unless there shall have been a default in payment of the aggregate Redemption Price for shares to be redeemed (whether because there is no source of funds legally available for such redemption or because such funds shall not be paid or made available for payment), all rights of the holders of the Preferred Stock designated for redemption in the Redemption Notice as holders of such series of the Preferred Stock of the Corporation (except the right to receive the aggregate Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(d) **Payment.** On or prior to the Redemption Date, the Corporation shall deposit the aggregate Redemption Price of all shares of Preferred Stock designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust company to pay the Redemption Price for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered his or her share certificate to the Corporation pursuant to Section 3(c) above. Such instructions shall also provide that any monies deposited by the Corporation pursuant to this Section 3(d) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4 hereof no later than the fifth day preceding the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any monies deposited by the Corporation pursuant to this Section 3(d) remaining unclaimed at the expiration of two years following the Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

4. **Conversion.** The holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall have conversion rights as follows (the "Conversion Rights")::



(a) **Right to Convert.** Subject to Section 4(d), each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$0.1105 in the case of the Series A Preferred Stock, (ii) \$0.31 in the case of the Series B Preferred Stock, (iii) \$0.6323925 in the case of the Series C Preferred Stock, (iv) \$0.775 in the case of the Series D Preferred Stock, (v) \$7.50 in the case of the Series E Preferred Stock and (vi) \$11.00 in the case of the Series F Preferred Stock by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The initial "Conversion Price" per share shall be \$0.1105 for shares of Series A Preferred Stock, \$0.31 for shares of Series B Preferred Stock, \$0.6323925 for shares of Series C Preferred Stock, \$0.775 for shares of Series D Preferred Stock, \$7.50 for shares of Series E Preferred Stock and \$11.00 for shares of Series F Preferred Stock. Such initial Conversion Prices shall be subject to adjustment as set forth in Section 4(d) below. In the event that all shares of Preferred Stock are automatically converted pursuant to Section 4(b) in connection with the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), in which the Offering Price (as defined below) is less than the Conversion Price of the Series E Preferred Stock or Series F Preferred Stock then in effect (appropriately adjusted for any stock split, dividend, combination or other recapitalization), then the Conversion Price of the Series E Preferred Stock and/or Series F Preferred Stock, as the case may be, shall be adjusted, effective immediately prior to the closing of such offering, such that the Conversion Price after such adjustment (and after appropriate adjustments for stock splits, combinations and the like) shall be equal to the Offering Price. The "Offering Price" is defined as the price per share at which shares of the Corporation's Common Stock are initially sold by the Corporation to the public in such offering.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act, the public offering price of which is not less than \$7.50 per share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) or (ii) as to any particular series of Preferred Stock, the date specified by written consent or agreement of the holders of at least 66 2/3% of the then outstanding shares of such series of Preferred Stock, voting together as a class.

(c) **Mechanics of Conversion.** Before any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates

for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Prices of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation shall issue, after the date upon which any shares of Series F Preferred Stock were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the new Conversion Price for any series shall be a price equal to the quotient obtained by dividing the total computed under clause (x) below by the total computed under clause (y) below as follows:

(x) an amount equal to the sum of

(1) the aggregate purchase price of the shares of such series sold pursuant to the agreement pursuant to which shares of such series were first issued (the "Series Purchase Price" with respect to such series), plus

(2) the aggregate consideration, if any, received by the Corporation for all Additional Stock issued on or after the Purchase Date;

(y) an amount equal to the sum of :

(1) the Series Purchase Price for such series divided by the initial Conversion Price for such series (or such higher or lower Conversion Price as results from the application of Sections 4(d)(ii) and (iii) hereof), plus

(2) the number of shares of Additional Stock issued on or after the Purchase Date (as adjusted pursuant to Sections 4(d)(ii) and (iii) hereof, if applicable).

(B) **Definition of "Additional Stock"**. For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock or capital stock, securities, options, warrants to purchase or other instruments of similar effect convertible into or exchangeable for Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date other than

(1) Common Stock issued pursuant to a transaction described in Section 4(d)(ii) hereof,

(2) Shares of Common Stock issuable or issued to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan or agreement approved by the Board of Directors of the Corporation,

(3) Up to 100,000 shares of Common Stock issuable or issued to vendors of the Corporation,

(4) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions, the terms of which are approved by the Board of Directors of the Corporation,

(5) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation,

(6) Shares of Common Stock issued or issuable upon conversion of the Preferred Stock authorized for issuance as of the date hereof, and

(7) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock.

(C) **No Fractional Adjustments**. No adjustment of the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event

giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable and actual discounts, commissions, compensations or concessions allowed, paid or incurred by the Corporation for any underwriting in connection with the issuance and sale thereof but without deduction of any expenses paid by the Corporation. In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon

exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in

proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock and the Series F Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization, reclassification, combination, subdivision, merger, transfer, exchange, sale or other disposition of assets, stock split, stock dividend, reverse stock split or other distribution in respect of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed

hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment and dilution consistent with the terms hereof.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with one-half being rounded upward). The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares

of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F 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 such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these articles.

(k) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by overnight courier or sent by telegram or fax, or, in the case of domestic recipients, five (5) business days after being deposited in the United States mail as certified or registered mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

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

5. **Voting Rights.** The holders of the Preferred Stock shall have voting rights as follows:

(a) **In General.** Subject to subsection (b) hereof, the holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).



(b) **Voting for Board of Directors.** The holders of shares of Series D Preferred Stock, voting together as a single class, shall elect one member of the Board of Directors of the Corporation. Additional members of the Board of Directors, if any, shall be elected by the holders of shares of Common Stock and Preferred Stock, voting together as a single class and on an as-converted basis.

6. **Protective Provisions.**

(a) So long as any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock or Series F Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, voting together as a class:

(i) effect (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (B) a sale, lease, license or other conveyance of all or substantially all of the assets of the Corporation, unless the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration in the acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity in approximately the same relative percentages after such acquisition or sale as before such acquisition or sale;

(ii) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock or Series F Preferred Stock so as to affect adversely the shares of such series;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock;

(iv) authorize, issue or reclassify, or obligate itself to issue or reclassify, any other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock with respect to voting, dividends, conversion rights or upon liquidation;

(v) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the redemption of shares of Preferred Stock pursuant to Section 3 hereof or to the repurchase of shares of Common

Stock from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements under which the Company has the option to repurchase such shares at cost or at fair market value upon the occurrence of certain events, such as the termination of employment or a proposed transfer of such shares; or

(vi) consummate a transaction subject to Section 305 of the Internal Revenue Code of 1986, as amended.

(b) Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance herewith, so long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series D Preferred Stock, voting as a separate class:

(i) effect (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (B) a sale, lease, license or other conveyance of all or substantially all of the assets of the Corporation, unless the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration in the acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity in approximately the same relative percentages after such acquisition or sale as before such acquisition or sale;

(ii) alter or change the rights, preferences or privileges of the shares of Series D Preferred so as to affect adversely the shares of such series;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series D Preferred;

(iv) authorize, issue or reclassify, or obligate itself to issue or reclassify, any other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the Series D Preferred Stock with respect to voting, dividends, conversion rights or upon liquidation;

(v) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the redemption of shares of Preferred Stock pursuant to Section 3 hereof or to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements under which the Company has the option to repurchase such shares at cost or at fair market value upon the occurrence of certain events, such as the termination of employment or a proposed transfer of such shares;

(vi) amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws if such action would alter or change the rights, preferences, privileges or restrictions of the shares of Series D Preferred Stock so as to affect adversely the shares of such series; or

(vii) consummate a transaction subject to Section 305 of the Internal Revenue Code of 1986, as amended.

(c) Notwithstanding the foregoing, with respect to any series of Preferred Stock, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of such series of Preferred Stock, voting as a separate class, amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation if such action adversely affects such series in a different manner than other series of Preferred Stock.

7. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. The Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

8. **Repurchase of Shares.** In connection with repurchases by the Corporation of its Common Stock pursuant to its agreements with certain of the holders thereof, Sections 502 and 503 of the California General Corporation Law shall not apply in whole or in part with respect to such repurchases.

(C) **Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) of this Article III.

3. **Redemption.** The Common Stock is not redeemable.

4. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

#### **ARTICLE IV**

(A) The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

(B) The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) to the fullest extent permissible under California law.

(C) Any amendment or repeal or modification of the foregoing provisions of this Article IV by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.”

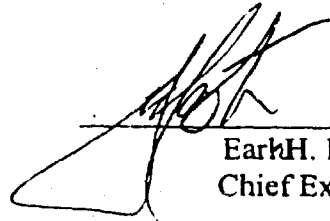
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3. The foregoing amendment has been approved by the Board of Directors of this corporation.

4. The foregoing amendment was approved by the holders of the requisite number of shares of this corporation in accordance with Sections 902 and 903 of the California General Corporation Law. The total number of outstanding shares entitled to vote with respect to the foregoing amendment was 9,582,064 shares of Common Stock, 2,494,070 shares of Series A Preferred Stock, 2,258,058 shares of Series B Preferred Stock, 3,162,584 shares of Series C Preferred Stock, 10,193,544 shares of Series D Preferred Stock and 7,633,329 shares of Series E Preferred Stock. The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required. The percentage vote required was (i) a majority of the outstanding shares of Common Stock, (ii) a majority of the outstanding shares of Preferred Stock, (iii) a majority of the outstanding shares of Series A, Series B, Series C and Series E, voting together as a single class, (iv) a majority of the Series D Preferred Stock voting as a single class, and (v) a majority of the outstanding shares of Common Stock and Preferred Stock, voting together as a class.

The undersigned certify 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 our own knowledge.

Executed at Mountain View, California, on January 14, 2000.



Earl H. LeMasters III,  
Chief Executive Officer



Mark A. Medearis, Secretary

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SEVENTH AMENDED AND RESTATED  
ARTICLES OF INCORPORATION

OF

REPLAYTV, INC.

FILED NBP  
In the office of the Secretary of State  
of the State of California

March 2, 2000  
Bill Jones  
BILL JONES, Secretary of State

The undersigned, Earle H. LeMasters III and Mark A. Medearis, hereby certify that:

1. They are the duly elected and acting Chief Executive Officer and Secretary, respectively, of ReplayTV, Inc., a California corporation.
2. The Articles of Incorporation of this corporation shall be amended and restated to read in full as follows:

**"ARTICLE I**

The name of this corporation is ReplayTV, Inc. (the "Corporation").

**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**

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 110,077,301 shares, each with a par value of \$0.001 per share. 75,000,000 shares shall be Common Stock and 35,077,301 shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by these Seventh Amended and Restated Articles of Incorporation may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of 2,494,070 shares. The second series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of 2,580,644 shares. The third series of Preferred Stock shall be designated "Series C Preferred Stock" and shall consist of 3,162,592 shares. The fourth series of Preferred Stock shall be designated "Series D Preferred Stock" and shall consist of 10,200,000 shares. The fifth series of Preferred Stock shall be designated "Series E Preferred Stock" and shall consist of 7,639,995 shares. The sixth series of Preferred Stock shall be designated "Series F Preferred Stock" and shall consist of 5,627,267 shares. The seventh series of Preferred Stock shall be designated "Series G Preferred Stock" and shall consist of 3,372,733 shares. The rights, preferences, privileges and restrictions granted to

and imposed on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock are as set forth below in this Article III(B).

1. **Dividend Provisions.** Subject to the rights of series of Preferred Stock that may from time to time come into existence, the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, on a pro rata basis at the rate of (i) \$0.00884 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series A Preferred Stock, (ii) \$0.0248 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series B Preferred Stock, (iii) \$0.0505915 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series C Preferred Stock, (iv) \$0.062 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series D Preferred Stock, (v) \$0.60 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series E Preferred Stock and (vi) \$0.88 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum on each outstanding share of Series F Preferred Stock and Series G Preferred Stock, payable quarterly when, as and if declared by the Board of Directors. No dividends shall be paid in any calendar year on any share of Common Stock unless a full dividend pursuant to the above provisions of this Section 1 is paid in such year with respect to all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock in an amount for each such share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock together with an amount equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock could then be converted. Such dividends shall not be cumulative.

2. **Liquidation.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance herewith, the holders of the



Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to (i) \$0.1105 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A Preferred Stock then held by them, (ii) \$0.31 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series B Preferred Stock then held by them, (iii) \$0.6323925 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series C Preferred Stock then held by them, (iv) \$0.775 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series D Preferred Stock then held by them, (v) \$7.50 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series E Preferred Stock held by them and (vi) \$11.00 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series F Preferred Stock and Series G Preferred Stock held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance herewith, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) above and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence in accordance herewith, if assets remain in the Corporation, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on the number of shares of Common Stock held by each.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (B) a sale, lease, license or other conveyance of all or substantially all of the assets of the Corporation, unless the Corporation's shareholders of record

as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration in the acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity in approximately the same relative percentages after such acquisition or sale as before such acquisition or sale.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

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

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

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

(3) If there is no public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(c)(ii)(A) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, the record date for determining shareholders entitled to vote (if applicable) and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to

such notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

3. **Redemption.**

(a) **Date and Amount.** On or at any time after (i) February 15, 2004, or (ii) the receipt by the Corporation in writing from the holders of not less than 66 2/3% of the Preferred Stock then outstanding of their consent to redemption hereunder, the Corporation may at any time it may lawfully do so, at the option of the Board of Directors, redeem in whole or in part the Preferred Stock by paying in cash therefor (i) \$0.1105 per share for each share of Series A Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), (ii) \$0.31 per share for each share of Series B Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), (iii) \$0.6323925 per share for each share of Series C Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), (iv) \$0.775 per share for each share of Series D Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), (v) \$7.50 per share for each share of Series E Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) and (vi) \$11.00 per share for each share of Series F Preferred Stock and Series G Preferred Stock then outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), plus in each case an amount equal to all declared but unpaid dividends on the outstanding shares of such Preferred Stock (such total amount per share is hereinafter referred to as the "Redemption Price").

(b) **Partial Redemption.** In the event of any redemption of only a part of the then outstanding shares of the Preferred Stock, the Corporation shall effect such redemption pro rata among all the holders of Preferred Stock (as to the number of shares, series by series, held on the date of notice of redemption).

(c) **Notice and Procedure.** At least 45 days prior to the date fixed for any redemption of the Preferred Stock (hereinafter referred to as the "Redemption Date"), written notice shall be mailed, postage prepaid, to each holder of record of the Preferred Stock, at the holder's post office address last shown on the records of the Corporation (provided, however, that in the case of non-domestic investors, written notice shall instead be delivered by confirmed

fax at the holder's fax number last shown on the records of the Corporation within the same time period), notifying such holder of the election of the Corporation to redeem such shares, specifying the Redemption Date and the date on which such holder's Conversion Rights (as hereinafter defined) as to such shares terminate, which date shall be no earlier than five business days prior to the Redemption Date, and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the holder's certificate or certificates representing the shares to be redeemed (such notice is hereinafter referred to as the "Redemption Notice"). On or prior to the Redemption Date, each holder of the Preferred Stock to be redeemed shall surrender his or her certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the aggregate Redemption Price (the Redemption Price per share to be redeemed multiplied by the number of shares to be redeemed) for the shares to be redeemed shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In calculating the aggregate Redemption Price, the number of shares shall be reduced by the number of shares which have been converted pursuant to Section 4 hereof between the date of notice of redemption and the date on which Conversion Rights to such shares terminate. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the Redemption Date, unless there shall have been a default in payment of the aggregate Redemption Price for shares to be redeemed (whether because there is no source of funds legally available for such redemption or because such funds shall not be paid or made available for payment), all rights of the holders of the Preferred Stock designated for redemption in the Redemption Notice as holders of such series of the Preferred Stock of the Corporation (except the right to receive the aggregate Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(d) Payment. On or prior to the Redemption Date, the Corporation shall deposit the aggregate Redemption Price of all shares of Preferred Stock designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust company to pay the Redemption Price for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered his or her share certificate to the Corporation pursuant to Section 3(c) above. Such instructions shall also provide that any monies deposited by the Corporation pursuant to this Section 3(d) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4 hereof no later than the fifth day preceding the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any monies deposited by the Corporation pursuant to this Section 3(d) remaining unclaimed at the expiration of two years following the Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

4. **Conversion.** The holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Subject to Section 4(d), each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$0.1105 in the case of the Series A Preferred Stock, (ii) \$0.31 in the case of the Series B Preferred Stock, (iii) \$0.6323925 in the case of the Series C Preferred Stock, (iv) \$0.775 in the case of the Series D Preferred Stock, (v) \$7.50 in the case of the Series E Preferred Stock and (vi) \$11.00 in the case of the Series F Preferred Stock and the Series G Preferred Stock by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The initial "Conversion Price" per share shall be \$0.1105 for shares of Series A Preferred Stock, \$0.31 for shares of Series B Preferred Stock, \$0.6323925 for shares of Series C Preferred Stock, \$0.775 for shares of Series D Preferred Stock, \$7.50 for shares of Series E Preferred Stock and \$11.00 for shares of Series F Preferred Stock and Series G Preferred Stock. Such initial Conversion Prices shall be subject to adjustment as set forth in Section 4(d) below. In the event that all shares of Preferred Stock are automatically converted pursuant to Section 4(b) in connection with the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), in which the Offering Price (as defined below) is less than the Conversion Price of the Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock then in effect (appropriately adjusted for any stock split, dividend, combination or other recapitalization), then the Conversion Price of the Series E Preferred Stock, Series F Preferred Stock and/or Series G Preferred Stock, as the case may be, shall be adjusted, effective immediately prior to the closing of such offering, such that the Conversion Price after such adjustment (and after appropriate adjustments for stock splits, combinations and the like) shall be equal to the Offering Price. The "Offering Price" is defined as the price per share at which shares of the Corporation's Common Stock are initially sold by the Corporation to the public in such offering.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act, the public offering price of which is not less than \$7.50 per share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) or (ii) as to any particular series of Preferred Stock, the date specified by written consent or agreement of the holders of at least 66 2/3% of the then outstanding shares of such series of Preferred Stock, voting together as a class.

(c) **Mechanics of Conversion.** Before any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Prices of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation shall issue, after the date upon which any shares of Series G Preferred Stock were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the new Conversion Price for any series shall be a price equal to the quotient obtained by dividing the total computed under clause (x) below by the total computed under clause (y) below as follows:

(x) an amount equal to the sum of

(1) the aggregate purchase price of the shares of such series sold pursuant to the agreement pursuant to which shares of such series were first issued (the "Series Purchase Price" with respect to such series), plus

(2) the aggregate consideration, if any, received by the Corporation for all Additional Stock issued on or after the Purchase Date;

(y) an amount equal to the sum of:

(1) the Series Purchase Price for such series divided by the initial Conversion Price for such series (or such higher or lower Conversion Price as results from the application of Sections 4(d)(ii) and (iii) hereof), plus

(2) the number of shares of Additional Stock issued on or after the Purchase Date (as adjusted pursuant to Sections 4(d)(ii) and (iii) hereof, if applicable).

(B) **Definition of "Additional Stock"**. For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock or capital stock, securities, options, warrants to purchase or other instruments of similar effect convertible into or exchangeable for Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date other than

(1) Common Stock issued pursuant to a transaction described in Section 4(d)(ii) hereof,

(2) Shares of Common Stock issuable or issued to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan or agreement approved by the Board of Directors of the Corporation,

(3) Up to 100,000 shares of Common Stock issuable or issued to vendors of the Corporation,

(4) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions, the terms of which are approved by the Board of Directors of the Corporation,

(5) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation,

(6) Shares of Common Stock issued or issuable upon conversion of the Preferred Stock authorized for issuance as of the date hereof, and

(7) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock.

(C) **No Fractional Adjustments.** No adjustment of the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable and actual discounts, commissions, compensations or concessions allowed, paid or incurred by the Corporation for any underwriting in connection with the issuance and sale thereof but without deduction of any expenses paid by the Corporation. In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall



be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the

effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock and the Series G Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization, reclassification, combination, subdivision, merger, transfer, exchange, sale or other disposition of assets, stock split, stock dividend, reverse stock split or other distribution in respect of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred

Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment and dilution consistent with the terms hereof.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with one-half being rounded upward). The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G 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 such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these articles.

(k) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by overnight courier or sent by telegram or fax, or, in the case of domestic recipients, five (5) business days after being deposited in the United States mail as certified or registered mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

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

5. **Voting Rights.** The holders of the Preferred Stock shall have voting rights as follows:

(a) **In General.** Subject to subsection (b) hereof, the holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) **Voting for Board of Directors.** The holders of shares of Series D Preferred Stock, voting together as a single class, shall elect one member of the Board of Directors of the Corporation. Additional members of the Board of Directors, if any, shall be elected by the holders of shares of Common Stock and Preferred Stock, voting together as a single class and on an as-converted basis.

6. **Protective Provisions.**

(a) So long as any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock, voting together as a class:

(i) effect (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (B) a sale, lease, license or other conveyance of all or substantially all of the assets of the Corporation, unless the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration in the acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity in approximately the same relative percentages after such acquisition or sale as before such acquisition or sale;

(ii) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock so as to affect adversely the shares of such series;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock, Series B Preferred

Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock;

(iv) authorize, issue or reclassify, or obligate itself to issue or reclassify, any other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock with respect to voting, dividends, conversion rights or upon liquidation;

(v) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the redemption of shares of Preferred Stock pursuant to Section 3 hereof or to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements under which the Company has the option to repurchase such shares at cost or at fair market value upon the occurrence of certain events, such as the termination of employment or a proposed transfer of such shares; or

(vi) consummate a transaction subject to Section 305 of the Internal Revenue Code of 1986, as amended.

(b) Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance herewith, so long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series D Preferred Stock, voting as a separate class:

(i) effect (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (B) a sale, lease, license or other conveyance of all or substantially all of the assets of the Corporation, unless the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration in the acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity in approximately the same relative percentages after such acquisition or sale as before such acquisition or sale;

(ii) alter or change the rights, preferences or privileges of the shares of Series D Preferred Stock so as to affect adversely the shares of such series;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series D Preferred Stock;

(iv) authorize, issue or reclassify, or obligate itself to issue or reclassify, any other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the Series D Preferred Stock with respect to voting, dividends, conversion rights or upon liquidation;

(v) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the redemption of shares of Preferred Stock pursuant to Section 3 hereof or to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements under which the Company has the option to repurchase such shares at cost or at fair market value upon the occurrence of certain events, such as the termination of employment or a proposed transfer of such shares;

(vi) amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws if such action would alter or change the rights, preferences, privileges or restrictions of the shares of Series D Preferred Stock so as to affect adversely the shares of such series; or

(vii) consummate a transaction subject to Section 305 of the Internal Revenue Code of 1986, as amended.

(c) Notwithstanding the foregoing, with respect to any series of Preferred Stock, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of such series of Preferred Stock, voting as a separate class, amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation if such action adversely affects such series in a different manner than other series of Preferred Stock.

7. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. The Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

8. **Repurchase of Shares.** In connection with repurchases by the Corporation of its Common Stock pursuant to its agreements with certain of the holders thereof, Sections 502 and 503 of the California General Corporation Law shall not apply in whole or in part with respect to such repurchases.

(C) **Common Stock.**

1. **Dividend Right.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any

assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) of this Article III.

3. **Redemption.** The Common Stock is not redeemable.

4. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

#### ARTICLE IV

(A) The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

(B) The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) to the fullest extent permissible under California law.

(C) Any amendment or repeal or modification of the foregoing provisions of this Article IV by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification."

\* \* \*

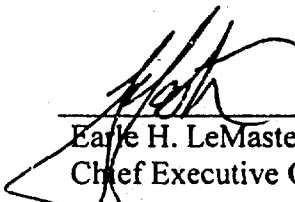


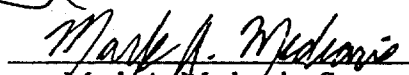
3. The foregoing amendment has been approved by the Board of Directors of this corporation.

4. The foregoing amendment was approved by the holders of the requisite number of shares of this corporation in accordance with Sections 902 and 903 of the California General Corporation Law. The total number of outstanding shares entitled to vote with respect to the foregoing amendment was 9,720,943 shares of Common Stock, 2,494,070 shares of Series A Preferred Stock, 2,258,058 shares of Series B Preferred Stock, 3,162,584 shares of Series C Preferred Stock, 10,193,544 shares of Series D Preferred Stock, 7,633,329 shares of Series E Preferred Stock and 5,627,267 shares of Series F Preferred Stock. The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required. The percentage vote required was (i) a majority of the outstanding shares of Common Stock, (ii) a majority of the outstanding shares of Preferred Stock, (iii) a majority of the outstanding shares of Series A, Series B, Series C, Series E and Series F Preferred Stock, voting together as a single class, (iv) a majority of the Series D Preferred Stock voting as a single class, and (v) a majority of the outstanding shares of Common Stock and Preferred Stock, voting together as a class.

The undersigned certify under penalty of perjury under the laws of the State of California that the matters set forth in these Articles of Incorporation are true and correct of our own knowledge.

Executed at Mountain View, California, on March 3, 2000.

  
\_\_\_\_\_  
Earle H. LeMasters III,  
Chief Executive Officer

  
\_\_\_\_\_  
Mark A. Medearis, Secretary

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FILED  
In the office of the Secretary of State  
of the State of California

AGREEMENT AND PLAN OF MERGER  
OF REPLAYTV, INC.  
A DELAWARE CORPORATION,  
and  
REPLAYTV, INC.  
A CALIFORNIA CORPORATION

MAY 15 2000

Bill Jones  
FILE JONES, Secretary of State

This Agreement and Plan of Merger dated as of May 3, 2000 (the "Agreement") is between ReplayTV, Inc., a California corporation ("ReplayTV-California"), and ReplayTV, Inc., a Delaware corporation ("ReplayTV-Delaware"). ReplayTV-Delaware and ReplayTV-California are sometimes referred to in this Agreement as the "Constituent Corporations."

RECITALS

A. ReplayTV-Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 110,077,301 shares, 75,000,000 of which are designated "Common Stock," \$0.001 par value per share, and 35,077,301 of which are designated "Preferred Stock," \$0.001 par value per share, of which (i) 2,494,070 shares have been designated Series A Preferred Stock, none of which are issued and outstanding, (ii) 2,580,644 shares have been designated Series B Preferred Stock, none of which are issued and outstanding, (iii) 3,162,592 shares have been designated Series C Preferred Stock, none of which are issued and outstanding, (iv) 10,200,000 shares have been designated Series D Preferred Stock, none of which are issued and outstanding, (v) 7,639,995 shares have been designated Series E Preferred Stock, none of which are issued and outstanding, (vi) 5,627,267 shares have been designated Series F Preferred Stock, none of which are issued and outstanding, and (vii) 3,372,733 shares have been designated Series G Preferred Stock, none of which are issued and outstanding. As of the date hereof, 1,000 shares of ReplayTV-Delaware Common Stock were issued and outstanding, all of which are held by ReplayTV-California, and no shares of Preferred Stock were issued and outstanding.

B. ReplayTV-California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 110,077,301 shares, 75,000,000 of which are designated "Common Stock," \$0.001 par value per share, 10,271,534 shares of which are issued and outstanding, and 35,077,301 shares of which are designated "Preferred Stock," \$0.001 par value per share, of which (i) 2,494,070 shares have been designated Series A Preferred Stock, all of which are issued and outstanding, (ii) 2,580,644 shares have been designated Series B Preferred Stock, of which 2,258,058 shares are issued and outstanding, (iii) 3,162,592 shares have been designated Series C Preferred Stock, of which 3,162,584 shares are issued and outstanding, (iv) 10,200,000 shares have been designated Series D Preferred Stock, of which 10,193,544 shares are issued and outstanding, (v) 7,639,995 shares have been designated Series E Preferred Stock, of which 7,633,329 shares are issued and outstanding, (vi) 5,627,267 shares have been designated Series F Preferred Stock, all of which are issued and outstanding, and (vii) 3,372,733 shares have been designated Series G Preferred Stock, of which 2,090,907 shares are issued and outstanding.

C. The Board of Directors of ReplayTV-California has determined that, for the purpose of effecting the reincorporation of ReplayTV-California in the State of Delaware, it is advisable and in the best interests of ReplayTV-California that ReplayTV-California merge with and into ReplayTV-Delaware upon the terms and conditions provided in this Agreement.

D. The respective Boards of Directors of ReplayTV-Delaware and ReplayTV-California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective stockholders and executed by the undersigned officers.

### **AGREEMENT**

In consideration of the mutual agreements and covenants set forth herein, ReplayTV-Delaware and ReplayTV-California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

#### **1. Merger.**

1.1 **Merger.** In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, ReplayTV-California shall be merged with and into ReplayTV-Delaware (the "Merger"), the separate existence of ReplayTV-California shall cease and ReplayTV-Delaware shall be, and is sometimes referred to below as, the "Surviving Corporation," and the name of the Surviving Corporation shall be ReplayTV, Inc..

1.2 **Filing and Effectiveness.** The Merger shall become effective upon completion of the following actions:

(a) Adoption and approval of this Agreement and the Merger by the stockholders of each Constituent Corporation in accordance with the applicable requirements of the Delaware General Corporation Law and the California General Corporation Law;

(b) The satisfaction or waiver of all of the conditions precedent to the consummation of the Merger as specified in this Agreement; and

(c) The filing with the Secretary of State of Delaware of an executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law.

The date and time when the Merger becomes effective is referred to in this Agreement as the "Effective Date of the Merger."

1.3 **Effect of the Merger.** Upon the Effective Date of the Merger, the separate existence of ReplayTV-California shall cease and ReplayTV-Delaware, as the Surviving Corporation, (a) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (b) shall be subject to all actions previously taken by its and ReplayTV-California's Board of Directors, (c) shall succeed, without other transfer, to all of the assets, rights, powers and property of ReplayTV-California in

the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (d) shall continue to be subject to all of the debts, liabilities and obligations of ReplayTV-Delaware as constituted immediately prior to the Effective Date of the Merger, and (e) shall succeed, without other transfer, to all of the debts, liabilities and obligations of ReplayTV-California in the same manner as if ReplayTV-Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

## **2. Charter Documents, Directors and Officers.**

**2.1 Certificate of Incorporation.** The Certificate of Incorporation of ReplayTV-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

**2.2 Bylaws.** The Bylaws of ReplayTV-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

**2.3 Directors and Officers.** The directors and officers of ReplayTV-California immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

## **3. Manner of Conversion of Stock.**

**3.1 ReplayTV-California Common Stock.** Upon the Effective Date of the Merger, each one share of ReplayTV-California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.001 par value, of the Surviving Corporation. No fractional share interests of the Surviving Corporation shall be issued. Any fractional share interests to which a holder would otherwise be entitled shall be aggregated so that no ReplayTV-California shareholders shall receive cash in an amount greater than the value of one (1) full share of ReplayTV-Delaware Common Stock.

**3.2 ReplayTV-California Preferred Stock.** Upon the Effective Date of the Merger, each share of ReplayTV-California Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock issued and outstanding immediately prior thereto, which shares are convertible into such number of shares of ReplayTV-California Common Stock as set forth in the ReplayTV-California Articles of Incorporation, as amended, shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and non-assessable share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock,

Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock of the Surviving Corporation, \$0.001 par value per share, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation, which shares of Preferred Stock shall be convertible into the same number of shares of the Surviving Corporation's Common Stock, \$0.001 par value per share, as such share of ReplayTV-California Preferred Stock was convertible into shares of ReplayTV-California Common Stock immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Certificate of Incorporation of the Surviving Corporation.

**3.3 ReplayTV-California Options, Stock Purchase Rights and Convertible Securities.**

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of ReplayTV-California under ReplayTV-California's 1997 Stock Option Plan, 1999 Stock Plan, 2000 Employee Stock Purchase Plan and 2000 Directors' Stock Option Plan, and all other employee benefit plans of ReplayTV-California. Each outstanding and unexercised option, other right to purchase or security convertible into ReplayTV-California Common Stock or Preferred Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase or a security convertible into the Surviving Corporation's Common Stock or Preferred Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, for each one share of ReplayTV-California Common Stock or Preferred Stock issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such ReplayTV-California Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to ReplayTV-California Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraphs 3.1 and 3.2 hereof, respectively.

(b) A number of shares of the Surviving Corporation's Common Stock and Preferred Stock shall be reserved for issuance upon the exercise or conversion of Rights equal to the number of shares of ReplayTV-California Common Stock and Preferred Stock so reserved immediately prior to the Effective Date of the Merger.

Notwithstanding the foregoing, with respect to options issued under the ReplayTV-California 1997 Stock Option Plan or 1999 Stock Plan that are assumed in the Merger, the number of shares of Common Stock to which the holder would be otherwise entitled upon exercise of each such assumed option following the Merger shall be rounded down to the nearest whole number and the exercise price shall be rounded up to the nearest whole cent. In addition, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

**3.4 ReplayTV-Delaware Common Stock.** Upon the Effective Date of the Merger, each share of Common Stock, \$0.001 par value per share, of ReplayTV-Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by

ReplayTV-Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.5 **Exchange of Certificates.** After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of ReplayTV-California Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the "**Exchange Agent**"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the appropriate class and series of the Surviving Corporation's capital stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of ReplayTV-California capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation's capital stock into which such shares of ReplayTV-California capital stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of capital stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing capital stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of ReplayTV-California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

#### 4. **General.**

4.1 **Covenants of ReplayTV-Delaware.** ReplayTV-Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of California and irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law.

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by ReplayTV-Delaware of all of the franchise tax liabilities of ReplayTV-California; and

(c) Take such other actions as may be required by the California General Corporation Law.

4.2 **Further Assurances.** From time to time, as and when required by ReplayTV-Delaware or by its successors or assigns, there shall be executed and delivered on behalf of ReplayTV-California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions, as shall be appropriate or necessary in order to vest or perfect in, or conform of record or otherwise by ReplayTV-Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of ReplayTV-California and otherwise to carry out the purposes of this Agreement, and the officers and directors of ReplayTV-Delaware are fully authorized in the name and on behalf of ReplayTV-California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 **Abandonment.** At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either ReplayTV-California or ReplayTV-Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of ReplayTV-California or by the sole stockholder of ReplayTV-Delaware, or by both.

4.4 **Amendment.** The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (a) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (b) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (c) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of such Constituent Corporation.

4.5 **Registered Office.** The registered office of the Surviving Corporation in the State of Delaware is located at 1013 Centre Road, Wilmington, County of New Castle, Delaware 19801. Corporation Service Company is the registered agent of the Surviving Corporation at such address.

4.6 **FIRPTA Notification.**

(a) On the Effective Date of the Merger, ReplayTV-California shall deliver to ReplayTV-Delaware, as agent for the shareholders of ReplayTV-California, a properly executed statement (the "Statement") in substantially the form attached hereto as Exhibit A. ReplayTV-



Delaware shall retain the Statement for a period of not less than seven years and shall, upon request, provide a copy thereof to any person that was a shareholder of ReplayTV-California immediately prior to the Merger. In consequence of the approval of the Merger by the shareholders of ReplayTV-California, (i) such shareholders shall be considered to have requested that the Statement be delivered to ReplayTV-Delaware as their agent and (ii) ReplayTV-Delaware shall be considered to have received a copy of the Statement at the request of the ReplayTV-California shareholders for purposes of satisfying ReplayTV-Delaware's obligations under Treasury Regulation Section 1.1445-2(c)(3).

(b) ReplayTV-California shall deliver to the Internal Revenue Service a notice regarding the Statement in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

4.7 **Agreement.** Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1945 Charleston Road, Mountain View, CA 94043, and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

4.8 **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

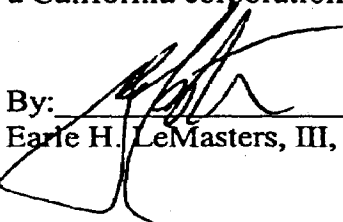
4.9 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

The undersigned authorized representatives of the Constituent Corporation have executed and acknowledged this Agreement as of the date first set forth above.

REPLAYTV, INC.,  
a Delaware corporation

By:   
\_\_\_\_\_  
Craig W. Dougherty, President

REPLAYTV, INC.,  
a California corporation

By:   
\_\_\_\_\_  
Earle H. LeMasters, III, Chief Executive Officer

**EXHIBIT A -- FORM OF FIRPTA CERTIFICATE**

May 3, 2000

Assistant Commissioner (International)  
Director, Office of Compliance  
OP:I:C:E:666  
950 L'Enfant Plaza South, S.W.  
COMSAT Building  
Washington, D.C. 20024

**NOTICE TO THE INTERNAL REVENUE SERVICE OF REPLAYTV, INC.'S  
UNITED STATES REAL PROPERTY HOLDING CORPORATION STATUS UNDER  
TREASURY REGULATION 1.897-2(H)(2)**

Dear Sir:

1. This Notice is being filed by ReplayTV, Inc., a California corporation, ("Target") pursuant to section 1.897-2(h)(2) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code").

2. The undersigned, on behalf of Target hereby declares that stock of Target is not a United States real property interest within the meaning of section 897 of the Code because Target is not and has not been a United States real property holding corporation as that term is defined in section 897(c) (2) of the Code during the applicable period specified in section 897(c) (1) (A) (ii) of the Code.

3. Target's United States taxpayer identifying number is: 77-0465127

4. Target's address is:

ReplayTV, Inc.  
1945 Charleston Road  
Mountain View, CA 94043

5. In connection with the acquisition of Target by ReplayTV, Inc., a Delaware corporation ("Acquiror"), the undersigned provided the attached statement to Acquiror declaring that an interest in Target is not a United States real property interest. The statement was voluntarily provided in response to a request from the transferee, Acquiror under Regulation 1.1445-2(c) (3) (i).

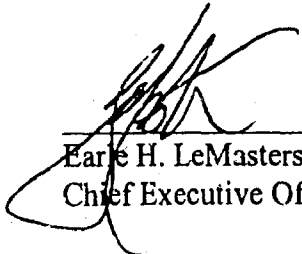
Acquiror's United States taxpayer identifying number is: 77-0465127

ReplayTV, Inc.  
1945 Charleston Road  
Mountain View, CA 94043

6. No supplemental statements pursuant to Treasury Regulations section 1.897-2(h)(5) are required to be filed herewith.

7. Under penalties of perjury the undersigned declares that he has examined this certificate, and the attachment hereto, and to the best of his knowledge and belief they are true, correct and complete. The undersigned further declares that he is a responsible officer and that he has authority to sign this document on behalf of Target.

A copy of the statement provided pursuant to Treasury Regulation §§1.897-2(h)(2) and 1.1445-2(c)(3)(i) is attached.



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Earle H. LeMasters, III  
Chief Executive Officer

A California Corporation

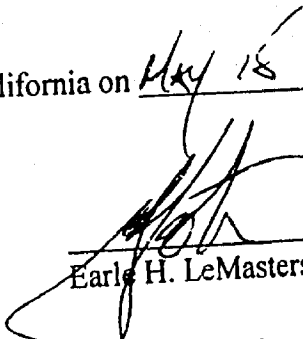
OFFICERS' CERTIFICATE OF APPROVAL OF THE MERGER

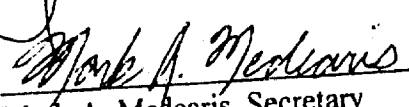
Earle H. LeMasters, III and Mark A. Medearis certify that:

1. They are the Chief Executive Officer and the Secretary, respectively, of ReplayTV, Inc., a corporation organized under the laws of the State of California.
2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock," respectively.
3. There were 9,720,943 shares of Common Stock, 2,258,058 shares of Series A Preferred Stock, 2,494,070 shares of Series B Preferred Stock, 3,162,584 shares Series C Preferred Stock, 10,193,544 shares Series D Preferred Stock, 7,633,329 shares of Series E Preferred Stock, 5,627,267 shares of Series F Preferred Stock and 2,090,907 shares of Series G Preferred Stock outstanding as of the record date (the "Record Date") and entitled to vote at the shareholders' meeting at which the Agreement and Plan of Merger attached hereto (the "Merger Agreement") was approved.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the outstanding shares of Common Stock and more than two-thirds of the outstanding shares of Preferred Stock, voting as separate classes.

Earle H. LeMasters, III and Mark A. Medearis further declare under penalty of perjury under the laws of the States of California and Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of his or her own knowledge.

Executed in Mountain View, California on May 18, 2000.

  
\_\_\_\_\_  
Earle H. LeMasters, III, Chief Executive Officer

  
\_\_\_\_\_  
Mark A. Medearis, Secretary

ReplayTV, Inc.

A Delaware Corporation

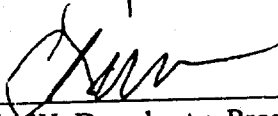
OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

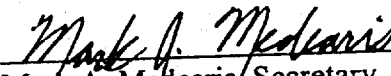
Craig W. Dougherty and Mark A. Medearis certify that:

1. They are the President and the Secretary, respectively, of ReplayTV, Inc., a corporation organized under the laws of the State of Delaware.
2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock," respectively.
3. There are 1,000 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). There are no shares of Preferred Stock outstanding.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock.

Craig W. Dougherty and Mark A. Medearis further declare under penalty of perjury under the laws of the States of Delaware and California that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of each's own knowledge.

Executed in Mountain View, California on May 3, 2000.

  
\_\_\_\_\_  
Craig W. Dougherty, President

  
\_\_\_\_\_  
Mark A. Medearis, Secretary



STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
PO BOX 1468  
SACRAMENTO CA 95812-1468

# TAX CLEARANCE CERTIFICATE

EXPIRATION DATE: May 15, 2000

February 23, 2000

VENTURE LAW GROUP  
SCOTT RING  
2800 SAND HILL RD  
MENLO PARK CA 94025

ISSUED TO : REPLAY <sup>TV</sup> NETWORKS, INC.  
ENTITY ID : 2034330

*name change 1/18/2000*

THIS CERTIFICATE IS VALID ONLY UPON THE SIMULTANEOUS QUALIFICATION OF REPLAY TV, INC A DELAWARE CORPORATION QUALIFIED TO DO BUSINESS IN CALIFORNIA AS DELAWARE REPLAY TV, INC.

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid, assumed, or are secured by other means.

If a final return has not been filed, one should be filed within two months and 15 days after the close of the month in which the dissolution or withdrawal takes place. If the corporation was inactive, a statement to that effect should be attached to the tax forms. All returns remain subject to audit until the expiration of the normal statutory period. Failure to file required returns may result in additional assessments.

A copy of this Tax Clearance Certificate has been sent to the Office of the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to: Office of the Secretary of State at 1500 11th Street, 3rd Floor, Sacramento CA. 95814, or by telephone, (916) 657-5448.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration

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REEL: 002234 FRAME: 0114

February 23, 2000  
VENTURE LAW GROUP  
ENTITY ID : 2034330  
Page 2

Date noted above, the corporation will remain  
subject to the filing requirements of the Bank  
and Corporation Tax Law.

By H. Hermansen  
Tax Clearance Unit  
Special Audit Section  
Telephone (916) 845-4124





# Cooley Godward LLP

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San Diego, CA  
858 550-6000

San Francisco, CA  
415 693-2000

February 12, 2001

VIA FEDERAL EXPRESS

[www.cooley.com](http://www.cooley.com)

VIA FEDERAL EXPRESS

U. S. Patent and Trademark Office  
Office of Public Records  
Attn: Customer Service Counter  
1213 Jefferson Davis Highway, 3<sup>rd</sup> Floor  
Arlington, VA 22202

APRIL M. PIERCEY, CLA  
650 843-5584  
[pierceyam@cooley.com](mailto:pierceyam@cooley.com)

**Re: (I3100-1006) Name Change**

Dear Assistant Commissioner:

Pursuant to 37 C.F.R. §3.11, the enclosed documents are submitted for recording with the Patent and Trademark Office:

The Six amended and Restated Articles of Incorporation ("Name Change") filed with the California Secretary of State on January 18, 2000, whereby Replay Networks, Inc. changes its name to ReplayTV, Inc., in connection with its Trademarks and Trademark Applications, including, but not limited to, the four (4) Trademark Applications listed on the Trademark Cover Sheet.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication or credit any over payment to Deposit Account No. **03-3115**.

After the enclosed Name Change has been recorded, please return it to me with the certificate of recordation.

Please acknowledge receipt of this letter and the accompanying enclosures by date stamping the enclosed self-addressed prepaid yellow return receipt card.

**TRADEMARK**  
**REEL: 002234 FRAME: 0116**

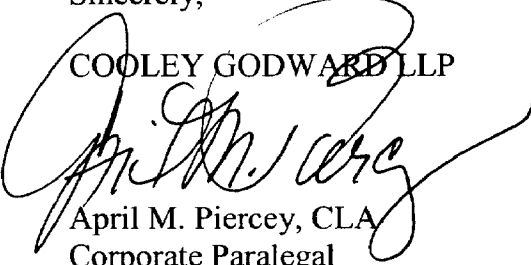
February 12, 2001

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If you have any questions regarding the enclosed documentation please call me.

Sincerely,

COOLEY GODWARD LLP



April M. Piercey, CLA  
Corporate Paralegal

Enclosures

cc: Margarita I. Morrow, Esq.  
(with enclosures)

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