

04-05-2001



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- ☒ **New**
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Document ID #
- ☐ **Correction of PTO Error**
Reel # Frame #
- ☐ **Corrective Document**
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Conveyance Type

- ☐ **Assignment** ☐ **License**
- ☐ **Security Agreement** ☐ **Nunc Pro Tunc Assignment**
Effective Date
Month Day Year
- ☒ **Change of Name**
- ☐ **Other**

Conveying Party

☐ Mark if additional names of conveying parties attached

Execution Date
Month Day Year
 06022000

Name ObjectSwitch Corporation

Formerly

- ☐ **Individual** ☐ **General Partnership** ☐ **Limited Partnership** ☐ **Corporation** ☐ **Association**
- ☐ **Other**
- ☒ **Citizenship/State of Incorporation/Organization** California

Receiving Party

☐ Mark if additional names of receiving parties attached

Name Kabira Technologies, Inc.

DBA/AKA/TA

Composed of

Address (line 1) One McInnis Parkway

Address (line 2)

Address (line 3) San Rafael

City

California

State/Country

94903

Zip Code

- ☐ **Individual** ☐ **General Partnership** ☐ **Limited Partnership**
- ☒ **Corporation** ☐ **Association**
- ☐ **Other**

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

- ☒ **Citizenship/State of Incorporation/Organization** Delaware

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Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

415) 393-2550

Name

Barbara L. Friedman

Address (line 1)

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3 Embarcadero Center

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Pages

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

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7

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

☐

Mark if additional numbers attached

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

Trademark Application Number(s)

76012164

Registration Number(s)

Number of Properties

Enter the total number of properties involved.

#

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

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Method of Payment:

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Deposit Account ☐

Deposit Account

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

Deposit Account Number:

#

50-0664

Authorization to charge additional fees:

Yes ☐

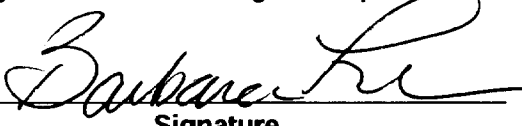
No ☐

Statement and Signature

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

Barbara L. Friedman

Name of Person Signing



Signature

March 19, 2001

Date Signed

**AGREEMENT AND PLAN OF MERGER
OF KABIRA TECHNOLOGIES, INC.**
(a Delaware corporation),
AND
OBJECTSWITCH CORPORATION
(a California corporation)

THIS AGREEMENT AND PLAN OF MERGER dated as of June 2, 2000 (the "Agreement") is between Kabira Technologies, Inc., a Delaware corporation ("Kabira"), and ObjectSwitch Corporation, a California corporation ("ObjectSwitch"). Kabira and ObjectSwitch are sometimes referred to herein as the "Constituent Corporations".

RECITALS

A. Kabira is a corporation duly organized and existing under the laws of the State of Delaware and, as of immediately prior to the Effective Date of the Merger (as defined below), has an authorized capital of 59,581,258 shares, 40,000,000 of which are designated "Common Stock," \$.001 par value per share, and 19,581,258 of which are designated "Preferred Stock," \$.001 par value per share. Of such authorized shares of Preferred Stock, as of immediately prior to the Effective Date of the Merger, 1,161,899 shares are designated "Series A Preferred Stock," 2,628,141 shares are designated "Series B Preferred Stock," 1,092,752 shares are designated "Series C Preferred Stock," 1,448,466 shares are designated "Series D Preferred Stock," 8,500,000 shares are designated "Series E Preferred Stock" and 4,750,000 shares are designated "Series F Preferred Stock." As of immediately prior to the Effective Date of the Merger, 100 shares of Common Stock are issued and outstanding, all of which were held by ObjectSwitch, and no shares of Preferred Stock are outstanding.

B. ObjectSwitch is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 59,581,258 shares, 40,000,000 of which are designated "Common Stock," \$.001 par value per share, and 19,581,258 of which are designated "Preferred Stock," \$.001 par value per share. Of such authorized shares of Preferred Stock, 1,161,899 shares are designated "Series A Preferred Stock" ("Series A Preferred"), 2,628,141 shares are designated "Series B Preferred Stock" ("Series B Preferred"), 1,092,752 shares are designated Series C Preferred Stock ("Series C Preferred"), 1,448,466 shares are designated Series D Preferred Stock ("Series D Preferred"), 8,500,000 shares are designated "Series E Preferred Stock" ("Series E Preferred") and 4,750,000 shares are designated "Series F Preferred Stock" ("Series F Preferred"). As of March 31, 2000, 4,306,780 shares of Common Stock, 1,139,042 shares of Series A Preferred, 2,618,141 shares of Series B Preferred, 1,075,857 shares of Series C Preferred, 1,441,648 shares of Series D Preferred, 7,332,570 shares of Series E Preferred and 1,733,212 shares of Series F Preferred were issued and outstanding. As of March 31, 2000, there were (i) outstanding options to purchase an aggregate of 2,171,096 shares of Common Stock pursuant to the 1996 Stock Option Plan (the "1996 Plan"), the 1998 Stock Plan (the "1998 Plan"), and the 2000 Key Employee Stock Plan (the "2000 Stock Plan," and together with the 1996 Plan and the 1998 Plan, the "Stock Plans"), and (ii) 17,740 shares of Common Stock reserved for future options grants pursuant to the Stock Plans.

In addition, as of March 31, 2000, there were outstanding warrants to purchase an aggregate of 256,198 shares of Preferred Stock.

C. The Board of Directors of ObjectSwitch has determined that, for the purpose of effecting the reincorporation of ObjectSwitch in the State of Delaware, it is advisable and in the best interests of ObjectSwitch and its shareholders that ObjectSwitch merge with and into Kabira upon the terms and conditions herein provided.

D. The respective Boards of Directors of Kabira and ObjectSwitch have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective shareholders and executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Kabira and ObjectSwitch 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, ObjectSwitch shall be merged with and into Kabira (the "Merger"), the separate existence of ObjectSwitch shall cease and Kabira shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Kabira Technologies, Inc.

1.2 **Filing and Effectiveness.** The Merger shall become effective when the following actions shall have been completed:

(a) This Agreement and the Merger shall have been adopted and approved by the stockholder/shareholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the California General Corporation Law;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;

(c) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and

(d) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the California General Corporation Law shall have been filed with the Secretary of State of the State of California.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger".

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of ObjectSwitch shall cease and Kabira, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and ObjectSwitch's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of ObjectSwitch in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of ObjectSwitch in the same manner as if Kabira 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 Kabira 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 Kabira 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 ObjectSwitch 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 until 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 ObjectSwitch Common Stock. Upon the Effective Date of the Merger, each share of ObjectSwitch 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 shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Common Stock, \$.001 par value, of the Surviving Corporation.

3.2 ObjectSwitch Preferred Stock. Upon the Effective Date of the Merger, each share of each Series of ObjectSwitch Preferred 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 shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of the same Series of Preferred Stock, \$.001 par value, of the Surviving Corporation.

3.3 ObjectSwitch Options, Stock Purchase Rights and Convertible Securities. Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue the

stock option plans (including without limitation the 1998 Stock Plan, the 2000 Key Employee Stock Plan and all other employee benefit plans of ObjectSwitch. Each outstanding and unexercised option, warrant or other right to purchase ObjectSwitch Common Stock shall become an option, warrant or right to purchase the Surviving Corporation's Common Stock on the basis of one (1) share of the Surviving Corporation's Common Stock for every one (1) share of ObjectSwitch Common Stock issuable pursuant to any such option, warrant or right, on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such ObjectSwitch option, warrant or right at the Effective Date of the Merger.

A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, warrants or rights equal to the number of shares of ObjectSwitch Common Stock so reserved immediately prior to the Effective Date of the Merger.

3.4 Kabira Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$.001 par value, of Kabira issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Kabira, 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 ObjectSwitch Common Stock may, at such stockholder's option, surrender the same for cancellation to Wilson Sonsini Goodrich & Rosati, Professional Corporation as exchange agent (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 Surviving Corporation's Common Stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of ObjectSwitch Common Stock shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock into which such shares of ObjectSwitch Common 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 Common Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common 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 ObjectSwitch 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 the Surviving Corporation's Common 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 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 Kabira. Kabira 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 in connection therewith 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 appropriate tax authority of the State of California necessary for the assumption by Kabira of all of the corporate and/or franchise tax liabilities of ObjectSwitch; 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 Kabira or by its successors or assigns, there shall be executed and delivered on behalf of ObjectSwitch such deeds and other instruments, and there shall be taken or caused to be taken by Kabira and ObjectSwitch 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 Kabira the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of ObjectSwitch and otherwise to carry out the purposes of this Agreement, and the officers and directors of Kabira are fully authorized in the name and on behalf of ObjectSwitch 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 ObjectSwitch or Kabira, or both, notwithstanding the approval of this Agreement by the shareholders of ObjectSwitch or by the sole stockholder of Kabira, 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 Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the shareholders of either Constituent Corporation shall not: (1) 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, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) 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 of shares or Series thereof of such Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is located at 1209 Orange Street, in the city of Wilmington, Delaware 19801, County of New Castle, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at One McInnis Parkway, San Rafael, California 94309, and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.

4.7 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California General Corporation Law.

4.8 Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.


4.9 FIRPTA Notification. (a) On the Effective Date of the Merger, ObjectSwitch shall deliver to Kabira, as agent for the shareholders of ObjectSwitch, a properly executed statement (the "Statement") substantially in the form attached hereto as Exhibit A. Kabira 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 ObjectSwitch immediately prior to the Merger. In consequence of the approval of the Merger by the shareholders of ObjectSwitch, (i) such shareholders shall be considered to have requested that the Statement be delivered to Kabira as their agent and (ii) Kabira shall be considered to have received a copy of the Statement at the request of the ObjectSwitch shareholders for purposes of satisfying Kabira's obligations under Treasury Regulation Section 1.1445-2(c)(3).

(b) ObjectSwitch 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).


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IN WITNESS WHEREOF, this Agreement, having first been approved by resolutions of the Boards of Directors of Kabira and ObjectSwitch, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.


KABIRA TECHNOLOGIES, INC.
a Delaware corporation

By: 
Paul Sutton, President and Chief Executive Officer

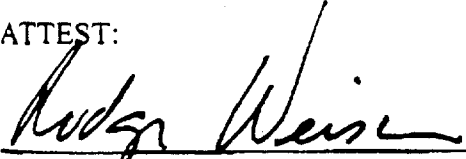
ATTEST:


Rodger Weismann, Secretary

OBJECTSWITCH CORPORATION
a California corporation

By: 
Paul Sutton, President and Chief Executive Officer

ATTEST:


Rodger Weismann, Secretary