

11-19-2001



101897170

COVER SHEET

ONLY

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Alta Technology Corporation 11-9-01

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State of Utah
 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: August 28, 2000

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

Name: Linux Networkx, Inc.
Internal Address: 8689 South 700 West
City: Sandy State: Utah Zip: 84070

Individual(s) citizenship
 Association
 General Partnership
 Limited Partnership
 Corporation-State of U
 Other

11-09-2001
U.S. Patent & TMO/TM Mail Rcpt Dt. #61

If assignee is not domiciled in the United States, a _____ state designation is attached: Yes No

(Designations must be a separate document from Assignment)

Additional name(s) & Address(es) attached? Yes No

4. Application number(s) or registration number(s): 75/895,390

A. Trademark Application No.(s) B. Trademark registration No.(s) Application Numbers
Additional numbers attached? Yes No

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

Name: John E. Delaney
Internal Address: PARSONS BEHLE & LATIMER
Street Address: 201 South Main Street, Suite 1800
City: Salt Lake City State: Utah Zip: 84111

6. Total number of applications and registrations involved: 1

7. Total Fee (37 CFR 3.41): \$40.00

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
50-0581

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

11/16/2001 LMUELLER 00000113 500581 75895390
FC:481 40.00 CH

DO NOT USE THIS SPACE

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.

John E. Delaney [Signature] 11/12/01
Name of Person Signing Signature Date

Total number of pages comprising cover sheet: 1



Utah Department of Commerce
Division of Corporations & Commercial Code
160 East 300 South, 2nd Floor, Box 146705
Salt Lake City, UT 84114-6705
Phone: (801) 530-4849
Toll Free: (877)526-3994 Utah Residents
Fax: (801) 530-6438
Web site: <http://www.commerce.state.ut.us>

Registration Number: 1023200-0142
Business Name: LINUX NETWORKX, INC.
Registered Date: JANUARY 24, 1989

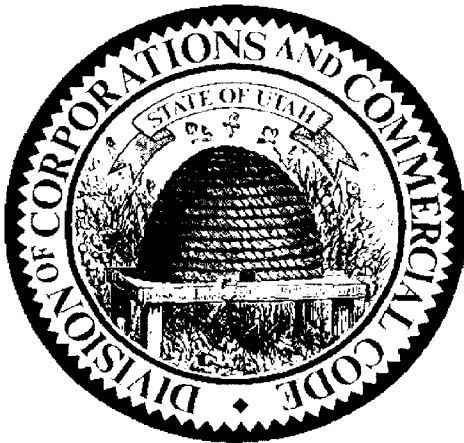
10/22/01

CERTIFIED COPY OF THE ARTICLES OF AMENDMENT AND RESTATEMENT

THE UTAH DIVISION OF CORPORATIONS AND COMMERCIAL CODE ("DIVISION") HEREBY CERTIFIES THAT THE ATTACHED IS TRUE, CORRECT, AND COMPLETE COPY OF THE ARTICLES OF

LINUX NETWORKX, INC.

AS APPEARS OF RECORD IN THE OFFICE OF THE DIVISION.



Kathy Berg
Director
Division of Corporations and Commercial Code

Dept. of Professional Licensing
(801)530-6628

Real Estate
(801)530-6747

Public Utilities
(801)530-6651

Securities
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Consumer Protection
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1023200

TS

ARTICLES OF AMENDMENT AND RESTATEMENT
OF THE
ARTICLES OF INCORPORATION
OF
ALTA TECHNOLOGY CORPORATION

Pursuant to and in accordance with Section 16-10a-1006 of the Utah Revised Business Corporation Act (as amended, supplemented or superseded, the "Act"), Alta Technology Corporation, a Utah corporation (the "Corporation"), hereby adopts the following Articles of Amendment and Restatement of its Articles of Incorporation with the intent that this amendment constitutes a restatement of such Articles of Incorporation and supersedes the existing Articles of Incorporation as previously amended:

I.

The name of the Corporation is Alta Technology Corporation.

II.

The following Amended and Restated Articles of Incorporation (the "Amended and Restated Articles") were adopted by the shareholders of the Corporation at a meeting of shareholders held on July 20, 2000 in the manner prescribed by the Act:

[see Exhibit A attached hereto]

III.

The number of shares of capital stock of the Corporation outstanding as of the date the Amended and Restated Articles were adopted by the shareholders was 205,308 shares of Common Stock, 60,567 shares of Series C Preferred Stock, 64,102 shares of Series D Preferred Stock and 64,102 shares of Series E Preferred Stock. No other class of shares was issued and outstanding.

IV.

The number of shares of the capital stock voted for the Amended and Restated Articles was 130,562 shares of Common Stock, 50,067 shares of Series C Preferred Stock, 56,410 shares of Series D Preferred Stock and 64,102 shares of Series E Preferred Stock.

FILED

JBB

AUG 28 2000

Utah Div. Of Corp. & Comm. Code

State of Utah
Department of Commerce
Division of Corporations and Commercial Code

I hereby certify that the foregoing has been filed and approved on this 28 day of August 2000 in the office of this Division and hereby issue this Certificate thereof.

Examiner _____ Date 8/29/00

Date: 08/28/2000
Receipt Number: 101364
Amount Paid: \$50.00



LC 100-NA 11/19/99

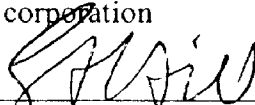
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DATED as of the 28th day of August, 2000.

ALTA TECHNOLOGY CORPORATION
a Utah corporation

By: _____



Stephen J. Hill, Vice President

EXHIBIT A
TO
ARTICLES OF AMENDMENT AND RESTATEMENT
OF THE
ARTICLES OF INCORPORATION
OF
ALTA TECHNOLOGY CORPORATION

Amended and Restated Articles of Incorporation
of
Alta Technology Corporation

ARTICLE I - NAME

The name of the corporation is Linux NetworX, Inc. (the "*Corporation*").

ARTICLE II - PURPOSES AND POWERS

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Utah Revised Business Corporation Act (the "*Act*"). The Corporation shall have all of the rights, powers and privileges now or hereafter conferred upon Corporations organized under the Act. The Corporation may do everything necessary, suitable or proper for the accomplishment of any of its corporate purposes.

ARTICLE III - SHARES

The total number of authorized shares of the Corporation shall be One Hundred Million (100,000,000), consisting of Seventy-Five Million (75,000,000) shares of common stock, par value \$0.005 per share, of the Corporation (the "*Common Stock*"), and Twenty-Five Million (25,000,000) shares of preferred stock, par value \$0.005 per share, of the Corporation (the "*Preferred Stock*"). All shares of the Common Stock shall have the same rights and preferences. The Common Stock shall have unlimited voting rights.

The designation, powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of each class of stock are as follows:

A. COMMON STOCK

1. Dividends. Subject to the rights of the holders of the Preferred Stock, and subject to any other provisions of the Articles of Incorporation, holders of the Common Stock shall be entitled to receive such dividends and other distributions in cash, stock or property of the Corporation as may be declared thereon by the board of directors of the Corporation (the "*Board*") from time to time out of assets or funds of the Corporation legally available therefor.

2. Liquidation; Dissolution. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and after payment or provision for payment to the holders of each series of the Preferred Stock of all amounts required in accordance with this Article III, the remaining assets and funds of the Corporation shall be divided among and paid to the holders of the Common Stock.

3. Voting.

(a) At every meeting of the shareholders of the Corporation, every holder of the Common Stock shall be entitled to one vote in person or by proxy for each share of such Common Stock standing in such shareholder's name on the stock transfer records of the Corporation.

(b) No shareholder shall have the right to cumulate votes in the election of directors.

(c) The Common Stock shall have unlimited voting rights.

4. Preemptive Rights. No holder of shares of the Common Stock of the Corporation shall, as such holder, be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or of bonds, debentures or other securities convertible into or exchangeable for stock, but all such additional shares of stock of any class, or bonds, debentures or other securities convertible into or exchangeable for stock, may be issued and disposed of by the Board on such terms and for such consideration, so far as may be permitted by law, and to such persons, as the Board in its absolute discretion may deem advisable.

B. PREFERRED STOCK

1. Number; Series. The Preferred Stock of the Corporation may be issued in one or more series, from time to time, with each such series to have such designation, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof, as shall be stated and expressed in an amendment to these Articles of Incorporation providing for the issue of such series. The Board is hereby expressly vested with authority to amend the Articles of Incorporation, without shareholder action or approval, to: (a) create one or more series of the Preferred Stock, fix the number of shares of each such series (within the total number of authorized shares of the Preferred Stock available for designation as a part of such series), and designate and determine, in whole or part, the preferences, limitations and relative rights of each series of the Preferred Stock; within the limits set forth in Section 16-10a-601 of the Act, all before the issuance of any shares of such series, except as provided in Section III.B.1(c) below; (b) alter or revoke the preferences, limitations and relative rights granted to or imposed upon any wholly unissued series of the Preferred Stock, or (c) increase or decrease the number of shares constituting any series of the Preferred Stock (the number of shares of which was originally fixed by the Board) either before or after the issuance of shares of such series, provided that the number may not be decreased below the number of shares of such series then outstanding, or increased above the total number of authorized shares of the Preferred Stock available for designation as a part of such series. Without limiting the foregoing, the authority of the Board with respect to each such series shall include, but not be limited to, the determination or fixing of the following:

(i) The dividend rate of such series, the conditions and times upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends and/or other

payments payable on or with respect to any other class or classes of stock or series thereof, or on the other series of the Preferred Stock, and whether dividends shall be cumulative or noncumulative;

(iii) The conditions upon which the shares of such series shall be subject to redemption by the Corporation and the times, prices and other terms and provisions upon which the shares of such series may be redeemed;

(iv) Whether or not the shares of such series shall be subject to the operation of retirement or sinking fund provisions to be applied to the purchase or redemption of such shares and, if such retirement or sinking fund be established, the annual amount thereof and the terms and provisions relative to the operation thereof and the relation payments on such retirement or sinking fund shall bear to any payments and/or distributions on or with respect to each other class or classes of stock or series thereof, or on or with respect to the other series of the Preferred Stock;

(v) Whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes, with or without par value, or of any other series of the Preferred Stock and, if provision is made for conversion or exchange, the times, prices, rates, adjustments and other terms and conditions of such conversion or exchange;

(vi) Whether or not the shares of the series shall have voting rights, in addition to the voting rights provided by law, as such voting rights granted by law may be modified or limited in the provisions designating such series, and, if so, subject to the limitations hereinafter set forth, the terms of such additional voting rights; and

(vii) The rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or upon distribution of assets of the Corporation.

2. Voting. Except as otherwise provided by an amendment to the Articles of Incorporation creating any series of the Preferred Stock or by the Act, the Common Stock issued and outstanding shall have and possess the exclusive power to vote for the election of directors and for all other purposes as provided in Section III.A.3. above.

3. Preemptive Rights. Except as otherwise provided by an amendment to the Articles of Incorporation, or by any agreement approved by the Board and to which the Company is a party, providing for the issuance of any series of the Preferred Stock, no holder of shares of the Preferred Stock shall, as such holder, be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or of bonds, debentures or other securities convertible into or exchangeable for stock, but all such additional shares of stock of any class, or bonds, debentures or other securities convertible into or exchangeable for stock, may be issued and disposed of by the Board on such terms and for such consideration, so far as may be permitted by law, and to such persons, as the Board in its absolute discretion may deem advisable.

4. Issuance. Each share of Preferred Stock shall be issued for such consideration as the Board may determine. Once duly issued for the consideration called for by resolution of the Board, shares of Preferred Stock shall be deemed fully paid and nonassessable.

C. SERIES C, D AND E PREFERRED STOCK

1. Designation; Consideration.

(a) Designation. There are hereby created out of the authorized and unissued shares of Preferred Stock of the Corporation (i) a series of Preferred Stock designated as the "Series C Preferred Stock," which series shall consist of 60,567 shares of Series C Preferred Stock (the "*Series C Preferred*"); (ii) a series of Preferred Stock designated as the "Series D Preferred Stock," which series shall consist of 64,102 shares of Series D Preferred Stock (the "*Series D Preferred*"); and (iii) a series of Preferred Stock designated as the "Series E Preferred Stock," which series shall consist of 64,102 shares of Series E Preferred Stock (the "*Series E Preferred*"). The Series C Preferred, Series D Preferred and Series E Preferred are collectively referred to herein as the "*Initial Preferred*."

(b) Stated Value Per Share. The "Stated Value Per Share" of the Initial Preferred shall be \$12.00, with respect to the Series C Preferred, and \$31.20 with respect to each of the Series D Preferred and the Series E Preferred. The Stated Value Per Share with respect to each series of the Initial Preferred shall be subject to adjustment for any stock dividends, combinations or splits with respect to the shares of such series.

(c) Rank.

(i) Each series of the Initial Preferred shall, with respect to all rights other than dividend rights and rights upon liquidation, winding up or dissolution, rank on a parity with each other series.

(ii) With respect to dividend rights and rights upon liquidation, winding up or dissolution, (A) the Series C Preferred shall rank prior to both the Series D Preferred and the Series E Preferred and (B) the Series D Preferred shall rank prior to the Series E Preferred.

(iii) Each series of the Initial Preferred shall, with respect to all rights other than voting rights, rank (A) junior to any other series of Preferred Stock duly established by the Board, the terms of which shall specifically provide that such other series shall rank prior in any respect to such series of the Initial Preferred, whether now existing or hereafter created (the "*Senior Preferred*"), (B) on a parity with any other series of Preferred Stock duly established by the Board, the terms of which shall specifically provide that such other series shall rank on a parity in any respect with such series of the Initial Preferred, whether now existing or hereafter created (the "*Parity Preferred*") and (C) prior to each other class or series of capital stock of the Corporation and all classes of the Common Stock, whether now existing or hereafter created (All of such classes or series of capital stock of the Corporation to which such series of the Initial Preferred ranks prior, including, without limitation (x) the Series D Preferred, in the case of the Series C Preferred only, (y) the Series E Preferred, in the case of each of the Series C Preferred and the Series D Preferred, and (z) the Common Stock, and including, without limitation, junior securities convertible into or exchangeable for other junior securities or phantom stock representing junior securities, are collectively referred to herein as "*Junior Securities*").

2. Dividends.

(a) General Obligation. So long as any shares of any series of Initial Preferred, are outstanding, the Corporation shall not pay any dividend, or make any distribution, either directly or indirectly, and whether in cash, obligations or shares of the Corporation or other property (any such declaration or distribution being referred to herein as a "*Dividend Distribution*") in respect of (i) any shares of any Junior Securities, to the extent the terms of such Junior Securities do not provide that such Junior Securities are pari passu with or prior to such series of the Initial Preferred with respect to dividend rights ("*Junior Dividend Securities*"), unless all declared dividends have been paid in full on each share of such series of the Initial Preferred and at the time of such Dividend Distribution or immediately prior thereto a Dividend Distribution in the amount of 6% of the Stated Value Per Share, to the extent such series of Initial Preferred consists of the Series C Preferred, and the Stated Value Per Share, to the extent such series of Initial Preferred consists of the Series D Preferred or the Series E Preferred, is declared and paid or set apart for payment (or otherwise effected) with respect to all outstanding shares of such series of the Initial Preferred or (ii) any shares of any Parity Preferred, to the extent the terms of such Parity Preferred provide that such Parity Preferred has equal priority with such series of the Initial Preferred (the "*Parity Dividend Preferred*"), unless at the time of such Dividend Distribution or immediately prior thereto a Dividend Distribution in the same or equivalent form and of at least the same value is declared and paid or set apart for payment (or otherwise effected) with respect to all outstanding shares of each such series of the Initial Preferred. The foregoing limitations on Dividend Distributions shall not apply to Dividend Distributions payable in shares of Junior Dividend Securities to holders of Junior Dividend Securities or Dividend Distributions payable in shares of Parity Dividend Preferred to holders of Parity Dividend Preferred. Dividends on each series of the Initial Preferred shall be payable quarterly when, as and if declared by the Board and shall not accrue or be cumulative.

(b) Payment of Dividends. Any dividend on the Initial Preferred declared but unpaid as provided in Section III.C.2.(a) shall be paid in cash or property as determined by the Board. Dividends may be declared and paid at any time to the holders of record on the record date for such dividend payment. No right shall accrue to holders of shares of Initial Preferred by reason of the fact that dividends on said shares are not declared in any prior year, nor shall any undeclared or unpaid dividend bear or accrue any interest.

(c) Non-Cash Dividend Distributions. Whenever a Dividend Distribution shall be payable in property the value of such Dividend Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board.

3. Liquidation.

(a) Preferential Amount. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after all preferential liquidating distributions required to be made to the holders of the Senior Preferred, to the extent the terms of such Senior Preferred provide that such Senior Preferred shall have priority over such series of Initial Preferred with respect to rights upon liquidation, dissolution or winding up of the Corporation (the "*Senior Liquidation Preferred*") and concurrently with the payment of any preferential liquidating distribution required to be made to the holders of the Parity Preferred, to the extent the terms of such Parity Preferred provide that such Parity Preferred shall have priority over such series of Initial Preferred with respect to rights upon liquidation, dissolution or winding up of the Corporation (the "*Parity Liquidation Preferred*"), each series of the Initial Preferred shall be entitled to receive out of the assets of the Corporation legally available for distribution to the shareholders of the Corporation (the "*Available Assets*") the Liquidation Amount (as defined below) with respect to such series, before any payment or distribution shall be made on any

Junior Security, to the extent the terms of such Junior Security do not provide that such Junior Security is pari passu with or prior to such series of the Initial Preferred with respect to rights upon liquidation, dissolution or winding up of the Corporation ("*Junior Dividend Securities*"). The "*Liquidation Amount*" shall mean, with respect to each series of the Initial Preferred, an amount equal to the Stated Value Per Share for such series for each share of such series that is issued and outstanding, plus a sum equal to all dividends declared but unpaid thereon to the date of such liquidation, dissolution or winding up (the "*Liquidation Date*"). If the Available Assets are insufficient to permit the payment of the full preferential amounts to any series of the Initial Preferred, then (y) the full preferential amounts shall be paid with respect to as many of the series of the Initial Preferred as possible, in order of priority as described above in Section III.C.1(b), and (z) any remaining Available Assets shall be distributed ratably among the holders of the series of Initial Preferred next in order of priority in proportion to the respective amounts the holders of such series of Initial Preferred would be entitled to receive if they were paid their full preferential amounts.

(b) Additional Participation. After the payments set forth in the preceding Section III.C.3(a), cash in the amount per share of up to the Stated Value Per Share of the highest Stated Value Per Share of any series of the Preferred Stock, whether existing or hereafter created, plus a sum equal to all dividends declared but unpaid on the Common Stock as of the Liquidation Date, shall be distributed to the holders of Common Stock (such amount and sum being the "*Common Stock Catch-Up*"), provided, that if the remaining Available Assets are insufficient to permit the payment of the full Common Stock Catch-Up to the holders of the Common Stock, then the entire remaining Available Assets shall be distributed ratably among the holders of the Common Stock in proportion to the shares of Common Stock then held by them; provided, further, that the holders of the Participating Preferred shall be entitled to participate in such Common Stock Catch-Up as if such holders were holders of the same number of shares of Common Stock to which such holders would be entitled if such holders had converted the Participating Preferred to Common Stock in accordance with Section III.C.5, immediately prior to the Liquidation Date, provided, still further, that the holders of such Participating Preferred shall participate only with respect to the portion of the Common Stock Catch-Up that exceeds the sum of the Stated Value Per Share of such Participating Preferred plus all dividends declared but unpaid on the Common Stock as of the Liquidation Date. After the payment in full of the Common Stock Catch-Up, the holders of the Participating Preferred shall be entitled to participate ratably with the holders of the Common Stock in the distribution of the remaining Available Assets, for which purpose each share of each series of Participating Preferred shall be deemed to be the equivalent of the number of shares of Common Stock into which such series of Participating Preferred is then convertible pursuant to Section III.C.5. The "*Participating Preferred*" shall mean the Series C Preferred, the Series E Preferred and any other series of Preferred Stock created hereafter and given additional participation rights substantially similar to the rights provided in this Section III.C.3(b). The provision of such additional participation rights for series of Preferred Stock created hereafter shall not require the consent or approval of any holder of any share of Participating Preferred existing at the time of such provision.

(c) Certain Transactions. For purposes of this Section III.C.3, the occurrence or consummation of a consolidation, acquisition or merger of the Corporation or the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Corporation in which the shareholders of the Corporation do not own a majority of the outstanding voting shares of the surviving or purchasing entity shall be deemed to be a liquidation, dissolution and winding up of the affairs of the Corporation.

(d) Non-Cash Liquidation Distribution. Whenever a distribution provided for in this Section III.C.3 shall be payable in property other than cash, the value of such distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board.

4. Voting Rights.

(a) Relative to Other Classes. The holders of Initial Preferred shall be entitled to notice of all shareholders meetings in accordance with the Corporation's Bylaws, and except as otherwise required by law, the holders of Initial Preferred shall be entitled to vote on all matters submitted to the shareholders of the Corporation for a vote, including the election of directors, together with the holders of any other series of Preferred Stock having voting rights and the holders of the Common Stock voting together as a single class, and each share of Initial Preferred (including fractional shares) shall be entitled to one vote for each whole share of Common Stock that would be issuable upon conversion of such share on the record date set by the Board for determining eligibility of holders of Preferred Stock to participate in the action being taken.

(b) Relative to Other Series. The holders of Initial Preferred and the holders of any other series of the Preferred Stock shall vote together as a class on any matters required by law or the Articles of Incorporation to be submitted to the holders of the Preferred Stock (or any series thereof) for a separate vote. Except as provided in Section III.C.4.(b) below, notwithstanding any provision of the Act granting the holders of the outstanding shares of a class or series rights to vote as a separate voting group (including, without limitation, Section 16-10a-1004 of the Act) or any provision of the Articles of Incorporation, no series of Initial Preferred shall have the right to vote as a separate voting group with respect to any matter submitted to the holders of the Common Stock or the Preferred Stock.

(c) Protective Provisions. Notwithstanding the foregoing, the Corporation shall not take any of the following actions without the affirmative vote or written consent of the holders of a majority of the outstanding shares of the particular series of Initial Preferred adversely affected by such action:

(i) alter or change the rights, powers, privileges or preferences of holders of shares of such series of Initial Preferred in any manner which would materially and adversely affect such rights, powers, privileges or preferences;

(ii) increase the number of shares of such series of Initial Preferred at the time authorized by the Articles of Incorporation;

(iii) authorize any new class or series of capital stock of the Corporation that would rank senior to such series of Initial Preferred with respect to dividend or liquidation rights;

provided, however, that the following shall not be deemed to alter or change the rights, powers, privileges or preferences of holders of such series of Initial Preferred, increase the number of shares of any series of Initial Preferred or authorize any new class or series of capital stock of the Corporation that would rank senior to any series of Initial Preferred with respect to dividend or liquidation rights nor in any way require the consent or approval of any series of Initial Preferred voting as a series or the Preferred Stock voting as a class (i) the subsequent issuance of any series of Preferred Stock of the Corporation that is on a parity with, but not senior to, a series of Initial Preferred with respect to rights other than dividend rights and rights upon liquidation, dissolution or winding up of the Corporation (notwithstanding that such series of Preferred stock is issued at the same price and on substantially the same terms as such series of Initial Preferred), (ii) any merger, consolidation or other corporate reorganization or any transaction or series of related transactions in which any of the Corporation's voting power, capital stock or any of the assets of the Corporation are transferred, sold or encumbered and/or (iii) any action taken pursuant to any

provision of the Articles of Incorporation expressly providing that consent or approval of the Preferred Stock is not required for the action to be taken pursuant thereto.

5. Conversion. Shares of Initial Preferred shall be convertible into shares of Common Stock in accordance with the terms and conditions set forth below.

(a) Time of Conversion.

(i) Outstanding shares of Initial Preferred may be converted into shares of Common Stock, in accordance with the provisions of this Section III.C.5., at the option of any holder thereof at any time; *provided*, that such holder must convert at least 20% of all of such shares then owned by such holder.

(ii) All outstanding shares of a series of Initial Preferred shall be automatically converted into shares of Common Stock, in accordance with the provisions of this Section III.C.5., upon the affirmative vote or written consent of holders of at seventy-six percent (76%) of the outstanding shares of such series of Initial Preferred, voting or consenting (as the case may be) as one series.

(iii) All outstanding shares of Initial Preferred shall be automatically converted into shares of Common Stock, in accordance with the provisions of this Section III.C.5., upon the effective date of a registration statement with respect to an underwritten public offering by the Corporation of equity securities of the Corporation which values the Corporation at not less than \$20,000,000 and is priced to generate aggregate offering proceeds of not less than \$5,000,000 before deduction of underwriters discounts and registration expenses.

(b) Conversion Price. Each share of each series of Initial Preferred shall be convertible at the principal office of the Corporation or at the office of any transfer agent of the Corporation, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value Per Share of such series by the applicable Conversion Price of such series, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The "*Conversion Price*" for each series of the Initial Preferred shall mean, initially, the Stated Value Per Share of such series of Initial Preferred. The applicable Conversion Price with respect to each series of Initial Preferred shall be subject to any adjustments required by Section III.C.5.(d) below.

(c) Procedures for Conversion.

(i) In order to convert shares of any series of Initial Preferred into shares of Common Stock (A) pursuant to Section III.C.5.(a)(i) above, the holder of shares of such series of Initial Preferred shall deliver to the Corporation or its transfer agent a written conversion notice of the holder's exercise of such holder's right to convert such shares and instructions as to the name or names in which the certificates representing shares of Common Stock should be issued and the addresses to which such certificates should be sent, or (B) pursuant to Section III.C.5.(a)(ii) or III.C.5.(a)(iii) above, the Corporation shall deliver to all holders of shares of such series of Initial Preferred a written conversion notice, setting forth the reason that conversion is required, and giving instructions to the holders thereof to deliver such shares to the Corporation or its transfer agent, as designated in such notice.

(ii) Each holder of shares of Initial Preferred being converted hereunder shall deliver the certificates representing the stock to be converted, endorsed to the Corporation or in blank with attached stock powers executed to the Corporation or in blank, simultaneously with the delivery by

the holder of the conversion notice under Section III.C.5.(c)(i)(A) above, or within 30 days after receipt by the holder of the conversion notice under Section III.C.5.(c)(ii)(B) above. Shares of Initial Preferred shall be deemed to have been converted on the date of either of such conversion notices (the "*Conversion Date*"), and the person entitled to receive the Common Stock issuable upon such conversion shall thereafter be treated for all purposes as the record holder of such Common Stock. As promptly as practicable on or after the Conversion Date, the Corporation shall issue and shall deliver, to the address specified in the conversion notice received from the holder, or in the absence of such specification to the address of the holder of such shares shown on the records of the Corporation or its transfer agent, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion, together with cash in lieu of any fraction of a share to the person entitled to receive the same, as provided in Section III.C.5.(j) below. Payment or adjustment shall be made upon conversion on account of any dividends declared but not yet paid as of the Conversion Date on the shares of Initial Preferred surrendered for conversion.

(d) Adjustment of Conversion Price for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price with respect to each series of Initial Preferred shall be subject to the following adjustments:

(i) (A) If the Corporation shall issue, after the date upon which any shares of a series of Initial Preferred 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 of Initial Preferred in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series of Initial Preferred in effect immediately prior to each such issuance shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of shares of Additional Stock so issued would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Additional Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Initial Preferred and all other convertible securities of the Corporation had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding warrants, options or other rights for the purchase of shares of capital stock or convertible securities of the Corporation had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date, but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Initial Preferred, other convertible securities of the Corporation, or outstanding options, warrants or other rights for the purchase of shares of capital stock or convertible securities of the Corporation, solely as a result of the adjustment of the Conversion Price (or other conversion ratios) resulting from the issuance of shares of Additional Stock causing such adjustment.

(B) No adjustment of the Conversion Price for any series of Initial Preferred 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. Except to the limited extent provided for in Section III.C.5.(d)(i)(E)(3) or (4), no adjustment of such Conversion Price pursuant to this Section III.C.5.(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) 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 discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the 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 by the Board, irrespective of any accounting treatment.

(E) In the case of the issuance (whether before, on or after the applicable 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 III.C.5.(d)(i) and Section III.C.5.(d)(ii):

(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 anti-dilution 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 Sections III.C.5.(d)(i)(C) and (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 anti-dilution 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 anti-dilution 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 anti-dilution 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 Sections III.C.5.(d)(i)(C) and (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 anti-dilution provisions thereof, the applicable Conversion Price of each series of Initial Preferred, 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 applicable Conversion Price of each series of Initial Preferred, 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 III.C.5.(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section III.C.5.(d)(i)(E)(3) or (4).

(ii) "*Additional Stock*" shall mean, with respect to each series of the Initial Preferred, any shares of Common Stock issued (or deemed to have been issued pursuant to Section III.C.5.(d)(i)(E)) by the Corporation after the Purchase Date of the series of Initial Preferred with respect to which "Additional Stock" is being determined) other than

(A) Common Stock issued pursuant to a transaction described in Section III.C.5.(d)(iii) hereof.

(B) 200,000 shares of Common Stock issuable or issued to employees, consultants or directors of the Corporation directly or pursuant to the Corporation's 1998 Stock Option and Incentive Plan, as amended, or any other stock option plan or restricted stock plan approved by the Board.

(C) Shares of Common Stock or Preferred Stock issuable upon exercise of warrants outstanding as of the Purchase Date of such series of Initial Preferred,

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

(E) Shares of Common Stock issued or issuable upon conversion of such series of Initial Preferred, and

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

(iii) In the event the Corporation should at any time or from time to time after the Purchase Date of a series of Initial Preferred 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 applicable Conversion Price of such series of Initial Preferred shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of

each share of Initial Preferred shall be increased in proportion to such increase of the aggregate number 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 III.C.5.(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date of a series of Initial Preferred 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 series of Initial Preferred shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of each 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 III.C.5.(d)(iii), then, in each such case for the purpose of this Section III.C.5.(e), the holders of Initial Preferred 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 Initial Preferred 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 of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section III.C.5. or Section III.C.3) provision shall be made so that each holder of a series of Initial Preferred shall thereafter be entitled to receive upon conversion of shares of such series of Initial Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of the number of shares of Common Stock deliverable upon conversion of shares of such series of Initial Preferred 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 III.C.5. with respect to the rights of the holders of such series of Initial Preferred after the recapitalization to the end that the provisions of this Section III.C.5. (including adjustment of the Conversion Price for such series of Initial Preferred then in effect and the number of shares purchasable upon conversion of shares of such series of Initial Preferred) shall be applicable after that event.

(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 III.C.5. 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 each series of Initial Preferred against impairment.

(h) Statement of Adjustment. Whenever any adjustment is required to be made as provided in this Section III.C.5., the Corporation shall forthwith deliver to the holders of shares of the affected series of Initial Preferred and file at its principal office and at the office of any transfer agent a statement describing in reasonable detail the adjustment and method of calculation used.

(i) Reservation of Shares. For the purpose of effecting the conversion of shares of Initial Preferred, the Corporation shall at all times reserve and keep available, free from preemptive rights

and out of its authorized but unissued Common Stock, the full number of shares of Common Stock then deliverable upon the conversion of all shares of Initial Preferred then outstanding.

(j) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Initial Preferred, but, in lieu of any fraction of a share which would otherwise be issuable, the Corporation shall pay cash in respect of such fraction in an amount equal to such fraction of the fair market price per share of Common Stock (as reasonably determined in good faith by the Board) at the close of business on the Conversion Date.

(k) Payment of Taxes. The Corporation shall pay any and all transfer taxes that may be payable in respect of the issuance or delivery of shares of Common Stock on conversion of shares of Initial Preferred pursuant hereto. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Initial Preferred so converted were registered, and no such issuance or delivery shall be required to be made unless and until the person requesting such issuance has paid to the Corporation the amount of any such tax or has established to the satisfaction of the Corporation that such tax has been paid.

ARTICLE IV - DIRECTORS

The number of directors of the Corporation shall be as determined by resolution of the Board, but shall not be less than five (5) nor more than nine (9).

The personal liability of any director to the Corporation or to its shareholders for monetary damages for any action taken or any failure to take any action, as a director, is hereby eliminated to the fullest extent permitted by Utah laws. In the event the applicable Utah law or this Article IV is repealed or amended to decrease or limit in any manner the protection or rights available to directors hereunder, such repeal or amendment shall not be retroactively applied in determining the personal liability of a director pursuant to this Article IV prior to the enactment of such amendment.

ARTICLE V - REGISTERED OFFICE AND AGENT

The street address of the Corporation's registered office and the name and signature of the Corporation's registered agent at that office are:

8689 South 700 West
Sandy, Utah 84070

Glen H. Lowry

ARTICLE VI - INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Corporation shall indemnify any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise to the fullest extent permitted by the Act, as the same may hereafter be amended, or as otherwise permitted by law.