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FORM PTO-1594
1-31-92

12-07-2001



101910344

To the Honorable Commissioner of Patents and Trademarks
Box Assignment, Washington, DC 20231
and original documents or copy thereof.

1. Name of conveying party(ies): 11-29-01

Finisar Corporation
1308 Moffet Park Drive
Sunnyvale, California 94089

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State of California
 Other _____

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

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

Name: Finisar Corporation

Internal Address: _____

Street Address: 1308 Moffet Park Drive

City Sunnyvale State CA ZIP 94089

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation- State of Delaware
 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

11-29-2001
U.S. Patent & TMO/TM Mail Rcpt Dt. #01

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: November 3, 1999

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) NONE

B. Trademark registration No.(s) 1,819,741

Additional numbers attached? Yes No

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

PENNIE & EDMONDS LLP
3300 Hillview Avenue
Palo Alto, California 94304

Attn.: Andrew J. Gray IV

File No.: 9775-0081-999

6. Total number of applications and registrations involved: 1

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

Please charge to the deposit account listed in Section 8.

8. Deposit account number:
16-1150

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.

Andrew J. Gray IV [Signature] November 29, 2001
 Name of Person Signing Signature Date

Total number of pages comprising cover sheet: 32

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

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Office of the Secretary of State

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

"FINISAR CORPORATION", A CALIFORNIA CORPORATION,

WITH AND INTO "FINISAR DELAWARE CORPORATION" UNDER THE NAME OF "FINISAR CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE EIGHTH DAY OF NOVEMBER, A.D. 1999, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



11-29-2001

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01



Edward J. Freel

Edward J. Freel, Secretary of State

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AUTHENTICATION: 0068956

DATE: 11-08-99

TRADEMARK
REEL: 002404 FRAME: 0083

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Merger Agreement") is entered into as of November 3, 1999 by and between Finisar Corporation, a California corporation ("Finisar California"), and Finisar Delaware Corporation, a Delaware corporation ("Finisar Delaware").

WITNESSETH:

WHEREAS, Finisar Delaware is a corporation duly organized and existing under the laws of the State of Delaware;

WHEREAS, Finisar California is a corporation duly organized and existing under the laws of the State of California;

WHEREAS, on the date of this Merger Agreement, Finisar Delaware has authority to issue 1,000 shares of Common Stock, par value \$0.001 per share (the "Finisar Delaware Common Stock"), of which 1,000 shares are issued and outstanding and owned by Finisar California;

WHEREAS, on the date of this Merger Agreement, Finisar California has authority to issue 75,000,000 shares of Common Stock (the "Finisar California Common Stock"), of which 33,618,298 shares are issued and outstanding, and 24,200,000 shares of Preferred Stock (the "Finisar California Preferred Stock"), of which 12,039,486 shares are issued and outstanding;

WHEREAS, the respective Boards of Directors for Finisar Delaware and Finisar California have determined that, for the purpose of effecting the reincorporation of Finisar California in the State of Delaware, it is advisable and to the advantage of said two corporations and their shareholders that Finisar California merge with and into Finisar Delaware upon the terms and conditions herein provided; and

WHEREAS, the respective Boards of Directors of Finisar Delaware and Finisar California, the shareholders of Finisar California, and the sole stockholder of Finisar Delaware have adopted and approved this Merger Agreement;

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Finisar California and Finisar Delaware hereby agree to merge as follows:

1. Merger. Finisar California shall be merged with and into Finisar Delaware, and Finisar Delaware shall survive the merger ("Merger"), effective upon the date when this Merger Agreement is made effective in accordance with applicable law (the "Effective Date").

2. Governing Documents. The Certificate of Incorporation of Finisar Delaware shall be amended to read in full as follows:

FIRST: The name of the Corporation is Finisar Corporation (hereinafter sometimes referred to as the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is Incorporating Services, Ltd., 15 East North Street, in the City of Dover, County of Kent. The name of the registered agent at that address is Incorporating Services, Ltd.

THIRD: 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 Delaware.

FOURTH: The Corporation is authorized to issue two classes of shares to be designated, respectively, "Preferred Stock" and "Common Stock." The total number of shares of all series of Preferred Stock that the Corporation shall have authority to issue is 29,078,972 and the total number of shares of Common Stock that the Corporation shall have authority to issue is 200,000,000. All the authorized shares shall have a par value of \$0.001.

The Board of Directors is authorized, subject to any limitations prescribed by law, to provide for the issuance of the shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences, and rights of the shares of each such series and any qualifications, limitations or restrictions thereon. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the certificate or certificates establishing the series of Preferred Stock.

Relative rights, preferences, privileges and restrictions granted to or imposed upon the Preferred Stock and the Common Stock are as follows:

A. SERIES A CONVERTIBLE REDEEMABLE PREFERRED STOCK

1. **Designation.** A total of 12,039,486 shares of the Corporation's Preferred Stock shall be designated as Series A Convertible Redeemable Preferred Stock, no par value per share (the "Convertible Preferred Stock").

2. **Election of Directors; Voting.**

(a) **Election of Directors.** The holders of outstanding shares of Convertible Preferred Stock shall, voting together as a separate class, be entitled to elect one (1) Director ("Director") of the Corporation. Such Director shall be the candidate receiving the highest number of affirmative votes (with only the holders of Convertible Preferred Stock entitled to cast one vote for or against each candidate with respect to each share of Convertible Preferred Stock held by such holder) of the outstanding shares of Convertible Preferred Stock (the "Convertible Preferred Stock Director Designee"), with votes cast against such candidates and votes withheld having no legal effect. The election of the Convertible Preferred Stock Director Designee by the holders of the Convertible Preferred Stock shall occur (i) at the annual meeting of holders of capital stock, (ii) at any special meeting of holders of capital stock, (iii) at any special meeting of

holders of Convertible Preferred Stock called by holders of a majority of the outstanding shares of Convertible Preferred Stock or (iv) by the written consent of holders of a majority of the outstanding shares of Convertible Preferred Stock. If at any time when any share of Convertible Preferred Stock is outstanding the Convertible Preferred Stock Director Designee should cease to be a Director for any reason, the vacancy shall only be filled by the vote or written consent of the holders of the outstanding shares of Convertible Preferred Stock, voting together as a separate class, in the manner and on the basis specified above.

(b) Voting Generally. Each holder of Convertible Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which the shares of Convertible Stock held by such holder could be converted pursuant to Section A.6 of Article Fourth hereof on the record date for such meeting or the effective date of the written consent of stockholders, if applicable. Each holder of Convertible Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall vote with holders of the Common Stock, voting together as a single class, upon all matters submitted to a vote of stockholders excluding those matters required to be submitted to a class or series vote pursuant to the terms hereof (including without limitation Section A.8 of Article Fourth) or by law.

3. Dividends.

(a) The holders of shares of Convertible Preferred Stock will be entitled to receive, if, when and as declared by the Board of Directors, out of any funds legally available therefore, noncumulative dividends at the rate of 6% of the Convertible Base Liquidation Preference Amount (as defined below) per share per annum (appropriately adjusted for stock splits and combinations) for each share of Convertible Preferred Stock then held by them (the "Convertible Preferred Stock Dividend Rate"). Such dividends may be payable quarterly or otherwise as the Board of Directors may from time to time determine. Dividends may be declared and paid upon shares of Common Stock in any fiscal year of the Corporation, only if dividends shall have been paid to or declared and set apart upon all shares of Convertible Preferred Stock, and all shares of any other series of Preferred Stock on a parity with the Convertible Preferred Stock, at its annual rate for each quarter of such fiscal year of the Corporation, including the quarter in which such dividends upon shares of Common Stock are declared, or if the amount of dividends to be paid on each share of Common Stock exceed the amount payable at the Convertible Preferred Stock Dividend Rate, an amount of dividends on each share of Convertible Preferred Stock equal to the amount to be paid on each share of Common Stock in excess of the amount to be paid on each share of Common Stock, and all redemptions then due and payable on the Convertible Preferred Stock shall have been paid in full or set apart for payment in full. No right shall accrue to holders of Convertible Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior year, nor shall any undeclared or unpaid dividends bear or accrue interest.

(b) If any dividend or other distribution payable in property other than cash is declared on the Common Stock excluding any dividend or other distribution for which adjustment to the Conversion Price (as defined below) is provided by Section A.7(a) of Article Fourth, each holder of shares of Convertible Preferred Stock on the record date for such dividend or distribution shall be entitled to receive on the date of payment or distribution of such dividend

or other distribution, the same property that such holder would have received if on such record date such holder was the holder of record of the number of shares of Common Stock into which the shares of Convertible Preferred Stock then held by such holder are convertible.

4. Liquidation.

(a) Liquidation Preference.

(i) Upon any Liquidation Event (as defined below), each holder of outstanding shares of Convertible Preferred Stock shall be entitled to be paid first out of assets of the Corporation available for distribution to stockholders, whether such assets are capital, surplus or earnings, and before any amount shall be paid or distributed to the holders of Common Stock or of any other stock ranking on liquidation junior to the Convertible Preferred Stock, an amount in cash equal to (i) \$2.1932 per share of Convertible Preferred Stock held by such holder (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Convertible Preferred Stock) (the "Convertible Base Liquidation Preference Amount"), plus (ii) any accrued but unpaid dividends to which such holder of outstanding shares of Convertible Preferred Stock is then entitled pursuant to Sections A.3 and A.5(d) of Article Fourth hereof, plus (iii) any interest accrued pursuant to Section A.5(c) of Article Fourth to which such holder of Convertible Preferred Stock is entitled (collectively, the "Convertible Preferred Liquidation Preference Amount"), and thereafter shall share ratably with the holders of Common Stock, with such distributions to be made as if each share of Convertible Preferred Stock had been converted into the number of shares of Common Stock issuable upon the conversion of such holder's shares of Convertible Preferred Stock immediately prior to any such Liquidation Event; provided, however, that if, upon any Liquidation Event, the amounts payable with respect to the Convertible Preferred Stock are not paid in full, the holders of the Convertible Preferred Stock shall share ratably any distribution of assets in proportion to the full preferential amounts to which they are entitled. The provisions of this Section A.4 of Article Fourth shall not in any way limit the right of the holders of Convertible Preferred Stock to elect to convert their shares of Convertible Preferred Stock into Redeemable Preferred Stock and Common Stock pursuant to Section A.6 of Article Fourth prior to or in connection with any Liquidation Event.

(ii) For purposes of this Certificate of Incorporation, the term "Liquidation Event" shall mean (v) any liquidation, dissolution or winding up of the Corporation or any of its subsidiaries; (w) a merger or consolidation of the Corporation with or into another entity or any other transaction or series of related transactions, in any such case in connection with or as a result of which the Corporation is not the surviving entity or the owners of the Corporation's outstanding equity securities prior to the transaction or series of related transactions do not own at least a majority of the outstanding equity securities of the surviving, resulting or consolidated entity; (x) any purchase by any party of shares of capital stock of the Corporation (either through a negotiated stock purchase or a tender for such shares), the effect of which is that such party that did not beneficially own a majority of the voting power of the outstanding shares of capital stock of the Corporation immediately prior to such purchase beneficially owns at least a majority of such voting power immediately after such purchase; (y) the redemption or repurchase of shares representing a majority of the voting power of the outstanding shares of capital stock of the Corporation; or (z) the sale or lease or other disposition of all or substantially all of the assets of the Corporation or winding up of the Corporation and

shall entitle the holders of the Convertible Preferred Stock to receive at the closing in cash, securities or other property (valued as provided in Section A.4(a)(iii) of Article Fourth below) amounts as specified in Section A.4(a)(i) of Article Fourth.

(iii) Whenever the distribution provided for in this Section A.4(a) of Article Fourth shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property. Securities shall be valued in the manner set forth in the definitive agreement for such acquisition, merger, consolidation or other transaction, and if no such method of valuation is set forth in such definitive agreement:

(x) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the closing thirty (30) day period ending three (3) days prior to the closing;

(y) If actively traded over-the-counter but not on the Nasdaq National Market, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(z) If there is no active market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(b) Notice. Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Convertible Preferred Stock notice in accordance with Section A.9 of Article Fourth together with a certificate prepared by the chief financial officer of the Corporation describing in detail the facts of such Liquidation Event, stating in detail the amount(s) per share of Convertible Preferred Stock each holder of Convertible Preferred Stock would receive pursuant to the provisions of Section A.4(a) of Article Fourth hereof and stating in detail the fact upon which such amount was determined.

5. Redemption.

(a) Redemption Events.

(i) The holder or holders of not less than a majority in voting power of the outstanding Convertible Preferred Stock may require the Corporation to redeem the outstanding Convertible Preferred Stock in three equal installments with the first such installment for thirty-three and one-third percent (33-1/3%) of the then outstanding shares of Convertible Preferred Stock being due and payable on November 6, 2004 the second such installment for fifty percent (50%) of the then-outstanding shares of Convertible Preferred Stock being due and payable on November 6, 2005 and the third and final such installment for all remaining outstanding shares of Convertible Preferred Stock being due and payable on November 6, 2006.

(ii) An election pursuant to subparagraph (i) of this Section A.5(a) of Article Fourth shall be made by such holders giving the Corporation and each other holder of Convertible Preferred Stock not less than ninety (90) days prior written notice, which notice shall set forth the date for such redemption.

(b) Redemption Date; Redemption Price. Upon the election of the holders of at least a majority of the voting power of the outstanding Convertible Preferred Stock to cause the Corporation to redeem the Convertible Preferred Stock pursuant to Section A.5(a)(i) of Article Fourth, all holders of Convertible Preferred Stock shall be deemed to have elected to cause all of the Convertible Preferred Stock to be so redeemed. Any date upon which a redemption shall occur in accordance with Section A.5(a) of Article Fourth shall be referred to as a "Convertible Preferred Redemption Date." The redemption price for each share of Convertible Preferred Stock redeemed pursuant to Section A.5 of Article Fourth shall be an amount in cash equal to (i) the Convertible Base Liquidation Preference Amount plus (ii) any accrued but unpaid dividends on such share of Convertible Preferred Stock pursuant to Sections A.3 and A.5(d) of Article Fourth hereof, plus (iii) any interest accrued with respect to such share of Convertible Preferred Stock pursuant to Section A.5(c) of Article Fourth to which such holder of Convertible Preferred Stock is entitled (collectively, the "Convertible Preferred Redemption Price"). The aggregate Convertible Preferred Redemption Price shall be payable in cash in immediately available funds to the respective holders of the Convertible Preferred Stock on the Convertible Preferred Redemption Date, subject to Section A.5(c) of Article Fourth. After an election has been made under this Section A.5(b) of Article Fourth by the holders of at least a majority of the voting power of the outstanding Convertible Preferred Stock, until the full Convertible Preferred Redemption Price has been paid to such holders for all shares of Convertible Preferred Stock being redeemed: (A) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any capital stock of the Corporation (other than the Convertible Preferred Stock in accordance with Section A.5(d) of Article Fourth); and (B) no shares of capital stock of the Corporation (other than the Convertible Preferred Stock in accordance with this Section A.5 of Article Fourth) shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or made available for a sinking fund or set aside or made available for the purchase, redemption or acquisition thereof. Notwithstanding the election to cause the Corporation to redeem the Convertible Preferred Stock as provided above, until the full Convertible Preferred Redemption Price has been paid to the holders of the Convertible Preferred Stock, the holders of at least a majority of the voting power of the outstanding Convertible Preferred Stock may rescind such election by providing written notice thereof to the Corporation.

(c) Redemption Prohibited. If, at a Convertible Preferred Redemption Date, the Corporation is prohibited under the Delaware General Corporation Law from redeeming all shares of Convertible Preferred Stock for which redemption is required hereunder, then it shall redeem such shares on a pro-rata basis among the holders of Convertible Preferred Stock in proportion to the full respective redemption amounts to which they are entitled hereunder to the extent possible and shall redeem the remaining shares to be redeemed as soon as the Corporation is not prohibited from redeeming some or all of such shares under the Delaware General Corporation Law. The shares of Convertible Preferred Stock not redeemed shall remain outstanding and entitled to all of the rights and preferences provided in this Certificate of Incorporation. In the event that the Corporation fails to redeem shares for which redemption is required pursuant to this Section A.5 of Article Fourth, then during the period from the

applicable Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable Convertible Preferred Redemption Price of such shares shall bear interest at the per annum rate of the greater of (i) 9% or (ii) 3% over the Citibank, N.A. prime rate published in the Wall Street Journal on such Convertible Preferred Redemption Date, compounded annually; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "Maximum Permitted Rate"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the obligation to be fulfilled shall automatically be reduced to the extent required to eliminate such excess.

(d) Dividend After Convertible Preferred Redemption Date. From and after a Convertible Preferred Redemption Date, no shares of Convertible Preferred Stock subject to redemption shall be entitled to dividends, if any, as contemplated by Section A.3 of Article Fourth; provided, however, that in the event that shares of Convertible Preferred Stock are unable to be redeemed and continue to be outstanding in accordance with Section A.5(c) of Article Fourth, such shares shall continue to be entitled to dividends and interest thereon as provided in Sections A.3 and A.5(c) of Article Fourth until the date on which such shares are actually redeemed by the Corporation.

(e) Surrender of Certificates. The Corporation shall give, not less than 10 days prior to the Convertible Preferred Redemption Date, written notice (the "Redemption Notice") to all holders of the Convertible Preferred Stock, which shall require each holder submitting shares for redemption to surrender to the Corporation on or before the Convertible Preferred Redemption Date, at the place designated in the Redemption Notice, such holder's certificate or certificates representing the shares of Convertible Preferred Stock to be redeemed. On or prior to the Redemption Date, each holder of shares of Convertible Preferred Stock submitted for redemption shall surrender the certificate or certificates evidencing such shares to the Corporation, at the place designated in the Redemption Notice and shall thereupon be entitled to receive payment of the appropriate Redemption Price by certified check or wire transfer. In the event the certificate or certificates are lost, stolen or missing, the holder of Convertible Preferred Stock shall deliver an affidavit or agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith (an "Affidavit of Loss") with respect to such certificates at the place set forth in the Redemption Notice. Each surrendered certificate shall be cancelled and retired; provided, however, that if the holder has exercised its redemption right pursuant to Section A.5(a)(i) of Article Fourth or the Corporation is prohibited from redeeming all shares of Convertible Preferred Stock as provided in Section A.5(c) of Article Fourth, the holder shall not be required to surrender said certificate(s) to the Corporation until said holder has received a new stock certificate for those shares of Convertible Preferred Stock not so redeemed.

6. Conversion. The holders of the Convertible Preferred Stock shall have the following conversion rights:

(a) Conversion Upon Election. Upon the written election of the holder or holders of not less than a majority in voting power of the outstanding shares of Convertible Preferred Stock, which may be exercised at any time, and without the payment of any additional consideration, each of the outstanding shares of Convertible Preferred Stock shall be

automatically converted into (i) the number of fully paid and non-assessable shares of Common Stock which results from dividing the Conversion Price (as defined in this Section A.6(a)) of Article Fourth per share in effect for the Convertible Preferred Stock at the time of conversion into the per share Conversion Value (as defined in this Section A.6(a) of Article Fourth) of the Convertible Preferred Stock and (ii) one (1) fully paid and non-assessable share of Redeemable Preferred Stock per share of Convertible Preferred Stock. The foregoing election may be conditioned on the occurrence of any Liquidation Event or initial public offering. The "Conversion Price" for each share of Convertible Preferred Stock shall initially be \$2.1932 and the "Conversion Value" for each share of Convertible Preferred Stock shall be initially \$2.1932. The Conversion Price per share of Convertible Preferred Stock shall be subject to adjustment from time to time as provided in Section A.7 of Article Fourth hereof. The number of shares of Common Stock into which a share of Convertible Preferred Stock is convertible is hereinafter referred to as the "Common Stock Conversion Rate." The number of shares of Redeemable Preferred Stock into which a share of Convertible Preferred Stock is convertible is hereinafter referred to as the "Redeemable Conversion Rate." If the holders of shares of Convertible Preferred Stock elect to convert the outstanding shares of Convertible Preferred Stock at a time when there are any accrued but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall become part of the Redeemable Liquidation Preference Amount, and shall become payable and shall be paid in full upon a Liquidation Event as set forth in Section B.4 of Article Fourth or redemption of the Redeemable Preferred Stock (as set forth in Section B.5 of Article Fourth).

(b) Automatic Conversion Upon QPO. Each share of Convertible Preferred Stock shall automatically be converted, without the payment of any additional consideration (except as set forth in the final paragraph of this Section A.6(b) of Article Fourth), into shares of Common Stock and Redeemable Preferred Stock as of, and in all cases subject to, the closing of the Corporation's first QPO (as defined below in this Section A.6(b) of Article Fourth); provided that if a closing of a QPO occurs, all outstanding shares of Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock and Redeemable Preferred Stock as provided herein immediately prior to such closing. Any such conversion shall be at the Common Stock Conversion Rate and Redeemable Conversion Rate in effect upon the closing of the QPO, as provided in Section A.6(a) of Article Fourth. "QPO" and "Qualified Public Offering" mean a firm commitment public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, provided that (i) such registration statement covers the offer and sale of Common Stock of which the aggregate net proceeds after deducting underwriting discounts and commissions attributable to sales for the account of the Corporation exceed \$20,000,000 at a per share price to public (as set forth in the final prospectus in connection with such public offering) (the "Public Offering Price") equal to at least two (2) times the Conversion Price, and (ii) all shares of Redeemable Preferred Stock which are outstanding or issuable upon such automatic conversion are redeemed immediately upon and as of the closing of such offering or contemporaneously with such offering for cash.

If the holders of shares of Convertible Preferred Stock are required to convert the outstanding shares of Convertible Preferred Stock pursuant to this Section A.6(b) of Article Fourth at a time when there are any accrued but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall be paid in full in cash by the Corporation in connection with such conversion.

(c) Procedure for Conversion Upon Election. Upon the execution of the election to convert pursuant to Section A.6(a) of Article Fourth, all outstanding shares of Convertible Preferred Stock shall be converted automatically into shares of Common Stock and Redeemable Preferred Stock at the applicable conversion rates specified in Section A.6(a) of Article Fourth, without any further action by the holders of such shares and whether or not the certificates representing such shares of Convertible Preferred Stock are surrendered to the Corporation or its transfer agent. The Corporation shall not be obligated to issue certificates evidencing the shares of Redeemable Preferred Stock or Common Stock issuable upon such conversion unless certificates evidencing such shares of the Convertible Preferred Stock so converted, or an Affidavit or Affidavits of Loss with respect to such certificates are delivered to the Corporation or its transfer agent. Upon such conversion, all rights with respect to the Convertible Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an Affidavit of Loss thereof to receive certificates for the number of shares of Common Stock and Redeemable Preferred Stock into which such Convertible Preferred Stock has been converted. Upon such surrender of a certificate representing Convertible Preferred Stock, or delivery of an Affidavit of Loss, the Corporation shall issue and send by hand delivery, by courier or by first class mail (postage prepaid) to the holder thereof or to such holder's designee, at the address designated by such holder, certificates for the number of shares of Common Stock and Redeemable Preferred Stock to which such holder shall be entitled upon conversion. The issuance of certificates for Common Stock and Redeemable Preferred Stock upon conversion of Convertible Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such stock. Certificates so surrendered shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. Notwithstanding anything to the contrary set forth in this Section A.6(c) of Article Fourth, in the event that the holders of shares of Convertible Preferred Stock elect to convert such shares pursuant to Section A.6(a) of Article Fourth conditioned upon the occurrence of any Liquidation Event or initial public offering, then (i) the conversion shall be effective as of and shall be subject to the occurrence of such Liquidation Event or initial public offering, and (ii) if such Liquidation Event or initial public offering occurs, then the conversion shall be deemed to have occurred immediately prior thereto; provided that the Corporation shall make appropriate provisions (x) for the Common Stock issued upon such conversion to be treated on the same basis as all other Common Stock in such Liquidation Event or initial public offering, provided further that such conversion shall not be construed to provide or require the registration of any shares of Common Stock for sale; and (y) for the payment of the Redeemable Liquidation Preference Amount (as defined in Section B.4 of Article Fourth) in connection with any Liquidation Event or the redemption of the Redeemable Preferred Stock (issued upon such conversion) upon election of such redemption in connection with any Liquidation Event or initial public offering, if applicable, as provided herein.

(d) Procedure for Automatic Conversion. As of, and in all cases subject to, the closing of a QPO (the "Automatic Conversion Date"), all outstanding shares of Convertible Preferred Stock shall be converted automatically into shares of Common Stock and Redeemable Preferred Stock at the applicable conversion rates specified in Section A.6(a) of Article Fourth and without any further action by the holders of such shares and whether or not the certificates

representing such shares of Convertible Preferred Stock are surrendered to the Corporation or its transfer agent; provided, however, that all holders of Convertible Preferred Stock shall be given prior written notice of the occurrence of a QPO in accordance with Section A.9 of Article Fourth hereof. The Corporation shall not be obligated to issue certificates evidencing the shares of Redeemable Preferred Stock or Common Stock issuable on the Automatic Conversion Date (or the payment for the shares of Redeemable Preferred Stock which are redeemed immediately after such automatic conversion as provided below and in Section B.5(a)(i) of Article Fourth) unless certificates evidencing such shares of the Convertible Preferred Stock being converted, or an Affidavit or Affidavits of Loss with respect to such certificates, are delivered to the Corporation or its transfer agent. On the Automatic Conversion Date, all rights with respect to the Convertible Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an Affidavit of Loss thereof to receive certificates for the number of shares of Common Stock and Redeemable Preferred Stock into which such Convertible Preferred Stock has been converted (or the payment to which such holder is entitled as provided below and in Sections A.6(b) and B.5(a)(i) of Article Fourth). All accrued and unpaid dividends shall be paid in full prior to or upon the closing of such QPO. Certificates so surrendered shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. Upon surrender of such certificates or Affidavit of Loss the Corporation shall issue and deliver to such holder, promptly (and in any event in such time as is sufficient to enable such holder to participate in such QPO) at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock and number of shares of Redeemable Preferred Stock into which the shares of the Convertible Preferred Stock surrendered were convertible on the Automatic Conversion Date. Notwithstanding anything to the contrary set forth in this Section A.6(d) of Article Fourth, the Corporation may deliver, in lieu of certificates for Redeemable Preferred Stock, a payment in an amount and form determined pursuant to Section B.5(b) of Article Fourth hereof on account of the redemption of such Redeemable Preferred Stock, and upon such payment the Redeemable Preferred Stock into which such Convertible Preferred Stock would have been converted shall be deemed to have been issued and redeemed by the Corporation.

(e) 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 and Redeemable Preferred Stock solely for the purpose of effecting the conversion of the shares of Convertible Preferred Stock such number of its shares of Common Stock and Redeemable Preferred Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Convertible Preferred Stock, and if at any time the number of authorized but unissued shares of Convertible Preferred Stock, shares of Common Stock and Redeemable Preferred Stock shall not be sufficient to effect the conversion of all then outstanding shares of Convertible Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock and Redeemable Preferred Stock to such number of shares as shall be sufficient for such purpose.

(f) No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Convertible Preferred Stock in any manner which would interfere with the timely conversion of any shares of Convertible Preferred Stock.

7. Adjustments. The Conversion Price in effect from time to time shall be subject to adjustment from and after the original issue date of the Convertible Preferred Stock, as follows:

(a) Adjustments to Conversion Price.

(i) Stock Dividends, Subdivisions and Combinations. Upon the issuance of additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock, the subdivision of outstanding shares of Common Stock into a greater number of shares of Common Stock, or the combination of outstanding shares of Common Stock into a smaller number of shares of the Common Stock, the Conversion Price shall, simultaneously with the happening of such dividend, subdivision or split be adjusted by multiplying the then effective Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this Section A.7(a)(i) of Article Fourth, shall be given effect, upon payment of such a dividend or distribution, as of the record date for the determination of stockholders entitled to receive such dividend or distribution (on a retroactive basis) and in the case of a subdivision or combination shall become effective immediately as of the effective date thereof.

(ii) Sale of Common Stock. In the event the Corporation shall at any time, or from time to time, issue, sell or exchange any shares of Common Stock (including shares held in the Corporation's treasury, but excluding up to an aggregate 14,675,611 shares of Common Stock (as appropriately adjusted for stock splits, stock dividends and the like)) issued or issuable to officers, Directors, employees of, or consultants, advisors, independent contractors to the Corporation (collectively, "Eligible Employees") or upon the exercise of options or other rights issued to such Eligible Employees (the "Excluded Shares"), for a consideration per share less than the Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares, then, and thereafter successively upon each such issuance, sale or exchange, the Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares shall forthwith be reduced to an amount determined by multiplying such Conversion Price by a fraction:

(A) the numerator of which shall be (X) the number of shares of Common Stock and Preferred Stock of all classes outstanding immediately prior to the issuance of such additional shares of Common Stock (excluding treasury shares but including shares of Common Stock issuable upon conversion or exchange of outstanding convertible or exchangeable securities of the Company), plus (Y) the number of shares of Common Stock to which the net aggregate consideration received by the Corporation for the total number of such additional shares of Common Stock so issued would purchase at the Conversion Price (prior to adjustment), and

(B) the denominator of which shall be (X) the number of shares of Common Stock and Preferred Stock of all classes outstanding immediately prior to the issuance of such additional shares of Common

Stock (excluding treasury shares but including shares of Common Stock issuable upon conversion or exchange of outstanding convertible or exchangeable securities of the Company), plus (Y) the number of such additional shares of Common Stock so issued.

(iii) Sale of Options, Rights or Convertible Securities. In the event the Corporation shall at any time or from time to time, issue options, warrants or rights to subscribe for shares of Common Stock or issue any securities convertible into or exchangeable for shares of Common Stock (other than any options or warrants for Excluded Shares), for a consideration per share (determined by dividing the Net Aggregate Consideration (as determined below) by the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible securities were exercised or converted to the fullest extent permitted by their terms) less than the Conversion Price in effect immediately prior to the issuance of such options or rights or convertible or exchangeable securities, the Conversion Price in effect immediately prior to the issuance of such options, warrants or rights or securities shall be reduced to an amount determined by multiplying such Conversion Price by a fraction:

(A) the numerator of which shall be (X) the number of shares of Common Stock and Preferred Stock of all classes outstanding immediately prior to the issuance of such options, rights or convertible securities (excluding treasury shares but including shares of Common Stock issuable upon conversion or exchange of outstanding convertible or exchangeable securities of the Company), plus (Y) the number of shares of Common Stock which the total amount of consideration received by the Corporation for the issuance of such options, warrants, rights or convertible securities plus the minimum amount set forth in the terms of such security as payable to the Corporation upon the exercise or conversion thereof (the "Net Aggregate Consideration") would purchase at the Conversion Price prior to adjustment, and

(B) the denominator of which shall be (X) the number of shares of Common Stock and Preferred Stock of all classes outstanding immediately prior to the issuance of such options, warrants, rights or convertible securities (excluding treasury shares but including shares of Common Stock issuable upon conversion or exchange of outstanding convertible or exchangeable securities of the Company), plus (Y) the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible securities were exercised or converted.

(iv) Expiration or Change in Price. If the consideration per share provided for in any options or rights to subscribe for shares of Common Stock or any securities exchangeable for or convertible into shares of Common Stock changes at any time, the Conversion Price in effect at the time of such change shall be readjusted to the Conversion Price which would have been in effect at such time had such options or convertible securities provided for such changed consideration per share (determined as provided in Section A.7(a)(iii) of Article Fourth hereof) at the time initially granted, issued or sold; provided that such adjustment

of the Conversion Price will be made only as and to the extent that the Conversion Price effective upon such adjustment remains less than or equal to the Conversion Price that would be in effect if such options, rights or securities had not been issued. No adjustment of the Conversion Price shall be made under this Section A.7(a) of Article Fourth upon the issuance of any additional shares of Common Stock which are issued pursuant to the exercise of any warrants, options or other subscription or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities if an adjustment shall previously have been made upon the issuance of such warrants, options or other rights. Any adjustment of the Conversion Price shall be disregarded if, as, and when the rights to acquire shares of Common Stock upon exercise or conversion of the warrants, options, rights or convertible securities which gave rise to such adjustment expire or are canceled without having been exercised, so that the Conversion Price effective immediately upon such cancellation or expiration shall be equal to the Conversion Price in effect at the time of the issuance of the expired or canceled warrants, options, rights or convertible securities, with such additional adjustments as would have been made to that Conversion Price had the expired or canceled warrants, options, rights or convertible securities not been issued.

(b) Other Adjustments. In the event the Corporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event lawful and adequate provision shall be made so that the holders of Convertible Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities of the Corporation which they would have received had their Convertible Preferred Stock been converted into Common Stock and Redeemable Preferred Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section A.7 of Article Fourth as applied to such distributed securities.

If the Common Stock issuable upon the conversion of the Convertible Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section A.7 of Article Fourth), then and in each such event the holder of each share of Convertible Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the number of shares of Common Stock into which such shares of Convertible Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(c) Mergers and Other Reorganizations. If at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section A.7 of Article Fourth) or a merger or consolidation of the Corporation with or into another Corporation or the sale of all or substantially all of the Corporation's properties and assets to any other

person, then as a part of and as a condition to the reorganization, merger, consolidation or sale, lawful and adequate provision shall be made so that the holders of the Convertible Preferred Stock shall thereafter be entitled to receive upon conversion of the Convertible Preferred Stock the number of shares of stock or other securities or property of the Corporation or of the successor Corporation resulting from such merger or consolidation or sale, to which a holder of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger, consolidation, or sale. In any such case, appropriate provisions shall be made with respect to the rights of the holders of the Convertible Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section A.7 of Article Fourth (including without limitation provisions for adjustment of the Conversion Price and the number of shares purchasable upon conversion of the Convertible Preferred Stock) shall thereafter be applicable, as nearly as may be, with respect to any shares of stock, securities or assets to be deliverable thereafter upon the conversion of the Convertible Preferred Stock.

(d) Special Adjustments to Conversion Price of Convertible Preferred Stock.

In addition to the foregoing adjustments, if the Corporation shall effect a firmly-underwritten initial public offering prior to July 30, 2000, the Conversion Price shall be adjusted as follows:

(i) If the Public Offering Price ("POP") is less than or equal to \$4.4113, then no adjustment shall be made to the Conversion Price under this Section A.7(d).

(ii) If the POP is greater than \$4.4113 and less than or equal to \$5.7135, then the Conversion Price shall be adjusted by the following formula (rounded to the nearest hundredth of a cent):

$$\text{Conversion Price} = \$2.1932 + [(\text{POP} - \$4.4113)/(\$5.7135 - \$4.4113)] * (\$2.5250 - \$2.1932).$$

(iii) If the POP is greater than \$5.7135 and less than or equal to \$7.0955, then the Conversion Price shall be adjusted by the following formula (rounded to the nearest hundredth of a cent):

$$\text{Conversion Price} = \$2.5250 + [(\text{POP} - \$5.7135)/(\$7.0955 - \$5.7135)] * (\$2.9398 - \$2.5250).$$

(iv) If the POP is greater than \$7.0955, then the Conversion Price shall be \$2.9398, subject to adjustment as provided elsewhere in this Section A.7 of Article Fourth.

The prices set forth above, including the POP, wherever appearing, shall be adjusted for stock splits, stock dividends, reclassifications, combinations and the like.

(e) Certificate of Adjustment. Upon the occurrence of each adjustment or readjustment pursuant to this Section A.7 of Article Fourth, 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 Convertible 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 written request at any time of any holder of Convertible Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Prices before and after such adjustment or readjustment, and (iii) the number of shares of Common Stock and

Redeemable Preferred Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Convertible Preferred Stock.

8. Covenants. So long as any shares of Convertible Preferred Stock shall be outstanding, the Corporation shall not, without first having provided the written notice of such proposed action to each holder of outstanding shares of Convertible Preferred Stock and having obtained the affirmative vote or, written consent of the holders of at least a majority in voting power of the outstanding shares of Convertible Preferred Stock, voting as a single class, with each share of Convertible Preferred Stock entitling the holder thereof to one vote per share of Convertible Preferred Stock held by such holder:

(a) directly or indirectly redeem, purchase, or otherwise acquire for consideration any share of its Common Stock or any other class of its capital stock except for (i) redemption of Convertible Preferred Stock or Redeemable Preferred Stock pursuant to and as provided in this Certificate, (ii) repurchase of up to 14,610,000 shares of Common Stock from the stockholders of the Corporation pursuant to Repurchase Agreements entered into before December 4, 1998 (iii) redemption or repurchase of Common Stock valued at a maximum of \$10,000 per annum issued pursuant to the Plan from Eligible Employees (as defined in Section A.7(a)(ii) of Article Fourth pursuant to an agreement containing vesting and/or repurchase provisions approved by the Board of Directors of the Corporation or a committee thereof, or (iv) repurchase of Common Stock pursuant to and only to the extent required by the Amended and Restated Shareholders' Agreement dated effective November 4, 1998 by and among the Corporation, the Investors and the Employee Holders (as defined therein);

(b) adopt any amendment to this Certificate of Incorporation, to the Corporation's Bylaws or adopt any certificate of designations, preferences and rights for another series of the Corporation's capital stock that eliminates, amends or restricts or otherwise adversely affects the rights and preferences of the Convertible Preferred Stock or the Redeemable Preferred Stock, or increase the authorized shares of Convertible Preferred Stock or Redeemable Preferred Stock;

(c) declare or make dividend payments on any shares of Common Stock or any other class of the Corporation's capital stock;

(d) create, or obligate itself to create, any class or series of shares having preference over or being on a parity with the Convertible Preferred Stock or the Redeemable Preferred Stock;

(e) increase the size of the Board of Directors to more than seven (7) members; or

(f) pay any bonuses to the Corporation's executive officers other than bonuses consistent with past practices unless any such bonus shall have been approved by the compensation committee of the Board of Directors.

Further, the Corporation and each subsidiary of the Corporation shall not, by amendment of this Certificate of Incorporation or any certificate of designations, preferences and rights for another series of the Corporation's capital stock or through any Liquidation Event or other

reorganization, 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 and each subsidiary of the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Certificate of Incorporation and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Convertible Preferred Stock and the Redeemable Preferred Stock set forth in this Certificate of Incorporation against impairment. Any successor to the Corporation or any subsidiary of the Corporation shall agree, as a condition to such succession, to carry out and observe the obligations of the Corporation hereunder with respect to the Convertible Preferred Stock and the Redeemable Preferred Stock.

9. Notice.

(a) Liquidation Events. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any of the transactions identified in clause (ii) hereof, or (ii) any Liquidation Event (as defined in Section A.4 of Article Fourth), QPO (as defined in Section A.6 of Article Fourth) or any other public offering becomes reasonably likely to occur, the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Convertible Preferred Stock (or each holder of Redeemable Preferred Stock, as applicable) at least twenty (20) business days prior to such record date specified therein or the expected effective date of any such transaction, whichever is earlier, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event, QPO or other public offering is expected to become effective, and (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event.

(b) Waiver of Notice. The holder or holders of not less than a majority in voting power of the outstanding shares of Convertible Preferred Stock (or Redeemable Preferred Stock, as applicable) may, at any time upon written notice to the Corporation, waive any notice provisions specified herein for the benefit of such holders, and any such waiver shall be binding upon the holders of all such securities.

(c) General. In the event that the Corporation provides any notice, report or statement to any holder of Common Stock, the Corporation shall at the same time provide a copy of any such notice, report or statement to each holder of outstanding shares of Convertible Preferred Stock (or Redeemable Preferred Stock, as applicable).

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

B. REDEEMABLE PREFERRED STOCK

1. **Designation.** A total of 12,039,486 shares of the Corporation's Preferred Stock shall be designated as Redeemable Preferred Stock, no par value per share (the "Redeemable Preferred Stock").

2. Voting.

(a) **Voting Generally.** Except with respect to the election to redeem the Redeemable Preferred Stock pursuant to Section B.5 of Article Fourth, the holders of Redeemable Preferred Stock shall not be entitled to vote on any matters except to the extent otherwise required under the Delaware General Corporation Law.

(b) **Waiver of Notice.** The holder or holders of not less than a majority in voting power of the outstanding shares of Redeemable Preferred Stock may, at any time upon written notice to the Corporation, waive any notice provisions specified herein for the benefit of such holders, and any such waiver shall be binding upon the holders of all such securities.

3. Dividends.

(a) The holders of shares of Redeemable Preferred Stock will be entitled to receive, if, when and as declared by the Board of Directors, out of any funds legally available therefor, noncumulative dividends at the rate of 6% of the Redeemable Base Liquidation Preferred Amount (as defined below) per share per annum (appropriately adjusted for stock splits and combinations) for each share of Redeemable Preferred Stock then held by them. Such dividends may be payable quarterly or otherwise as the Board of Directors may from time to time determine. Dividends may be declared and paid upon shares of Common Stock in any fiscal year of the Corporation, only if dividends shall have been paid to or declared and set apart upon all shares of Redeemable Preferred Stock, and all shares of any other series of Preferred Stock on a parity with the Redeemable Preferred Stock, at its annual rate for each quarter of such fiscal year of the Corporation, including the quarter in which such dividends upon shares of Common Stock are declared and all redemptions then due and payable on the Convertible Preferred Stock and the Redeemable Preferred Stock shall have been paid in full or set apart for payment in full. No right shall accrue to holders of Redeemable Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior year, nor shall any undeclared or unpaid dividends bear or accrue interest.

(b) If any dividend or other distribution payable in property other than cash is declared on the Common Stock, each holder of shares of Redeemable Preferred Stock on the record date for such dividend or distribution shall be entitled to receive on the date of payment or distribution of such dividend or other distribution the same property that such holder would have received if such holder was the holder of record of a like number of shares of Common Stock.

4. **Liquidation.** Upon any Liquidation Event, each holder of an outstanding share of Redeemable Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for the distribution to stockholders, whether such assets are capital, surplus or earnings, and before any amount shall be paid or distributed to the holders of Common Stock or of any other stock ranking on liquidation junior to the Redeemable Preferred Stock, an amount in cash

equal to the sum of (a) \$0.6345 per share of Redeemable Preferred Stock held by such holder (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Redeemable Preferred Stock) (which amount shall be referred to hereinafter as the "Initial Redeemable Base Liquidation Amount" or "IRBLA"), plus (b) any accrued but unpaid dividends to which such holder of outstanding shares of Redeemable Preferred Stock is entitled pursuant to Sections B.3 and B.5(d) of Article Fourth hereof (the sum of the IRBLA and the amount determined under clause (b) being referred to hereinafter as the "Redeemable Base Liquidation Amount" or "RBLA"), plus (c) any accrued but unpaid dividends or other amounts due in respect of the shares of Convertible Preferred Stock converted into such shares of Redeemable Preferred Stock, plus (d) any interest accrued pursuant to Section B.5(c) of Article Fourth to which such holder of outstanding shares of Redeemable Preferred Stock is entitled, if any (the sum of the RBLA and the amount determined under clause (c) being referred to hereinafter as the "Redeemable Liquidation Preference Amount"); provided, however, that if, upon any Liquidation Event, the amounts payable with respect to the Redeemable Liquidation Preference Amount are not paid in full the holders of the Redeemable Preferred Stock shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled.

Notwithstanding the foregoing, if the Corporation effects a firmly-underwritten initial public offering, the Initial Redeemable Base Liquidation Amount shall be adjusted as follows:

(i) If the POP is less than or equal to \$4.4113, then no adjustment shall be made to the IRBLA.

(ii) If the POP is greater than \$4.4113 and less than or equal to \$5.7135, then the IRBLA shall be determined by the following formula (rounded to the nearest hundredth of a cent):

$$\text{IRBLA} = \$0.6345 - [(\text{POP} - \$4.4113)/(\$5.7135 - \$4.4113)] * (\$0.6345 - \$0.4269).$$

(iii) If the POP is greater than \$5.7135 and less than or equal to \$7.0955, then the IRBLA shall be determined by the following formula (rounded to the nearest hundredth of a cent):

$$\text{IRBLA} = \$0.4269 - [(\text{POP} - \$5.7135)/(\$7.0955 - \$5.7135)] * (\$0.4269 - \$0.2193).$$

(iv) If the POP is greater than \$7.0955, then the IRBLA shall be \$0.2193.

The prices set forth above, including the POP, wherever appearing, shall be adjusted for stock splits, stock dividends, reclassifications, combinations and the like.

5. Redemption.

(a) Redemption Events.

(i) Upon Election of Holders upon a QPO. Upon the election of the holder or holders of not less than a majority of the outstanding Redeemable Preferred Stock, the

Corporation shall redeem in cash all (and not less than all, except as set forth in Section B.5(c) of Article Fourth) of the outstanding shares of Redeemable Preferred Stock upon the closing of the QPO. The foregoing election shall be made by such holders giving the Corporation and each other holder of the Redeemable Preferred Stock written notice not less than five (5) days prior to the closing of the QPO.

(ii) Upon Election of Corporation upon a QPO. The Corporation may elect to redeem in cash all (but not less than all, other than pursuant to Section B.5(c) of Article Fourth below) of the outstanding shares of Redeemable Preferred Stock at any time upon the closing of a QPO. The foregoing election shall be made by the Corporation giving each holder of Redeemable Preferred Stock written notice not less than five (5) days prior to the closing of a QPO.

(iii) Lapse of Time.

(A) At any time after the sixth anniversary of the issuance of the Convertible Preferred Stock on any one occasion any holder of Redeemable Preferred Stock may require the Corporation to redeem in cash up to thirty-three percent (33%) of the outstanding shares of Redeemable Preferred Stock held by such holder at such time.

(B) At any time after the seventh anniversary of the issuance of the Convertible Preferred Stock on any one occasion any holder of Redeemable Preferred Stock may require the Corporation to redeem up to sixty-six percent (66%) of the outstanding shares of the Redeemable Preferred Stock held by such holder at such time.

(C) At any time after the eighth anniversary of the issuance of the Convertible Preferred Stock on any one occasion any holder of Redeemable Preferred Stock may require the Corporation to redeem in cash up to one hundred percent (100%) of the outstanding shares of Redeemable Preferred Stock held by such holder at such time.

(D) Upon a Liquidation Event. Upon the election of the holder or holders of not less than a majority in voting power of the outstanding Redeemable Preferred Stock, the Corporation shall redeem in cash all (and not less than all, other than pursuant to Section B.5(c) of Article Fourth below) of the outstanding shares of Redeemable Preferred Stock upon the occurrence of a Liquidation Event or public offering not constituting a QPO. The foregoing election shall be made by such holders giving the Corporation and each other holder of Redeemable Preferred Stock (or Convertible Stock, as applicable) not less than five (5) days prior written notice, which notice set forth the date for such redemption.

(b) Redemption Date, Redemption Price. Any holder of Redeemable Preferred Stock may exercise such holder's right of redemption pursuant to Section B.5(a)(iii) of Article Fourth by such holder giving the Corporation not less than ten (10) days prior written

notice, which notice shall set forth the date for such redemption. Upon the election of the holders of not less than a majority in voting power of the outstanding Redeemable Preferred Stock to cause the Corporation to redeem the Redeemable Preferred Stock pursuant to Section B.5(a)(i) or (a)(iv) of Article Fourth, all holders of Redeemable Preferred Stock shall be deemed to have elected to cause the Redeemable Preferred Stock subject to such election to be so redeemed. Any date upon which a redemption shall actually occur in accordance with Section B.5(a) of Article Fourth shall be referred to as a "Redemption Date." The redemption price for each share of Redeemable Preferred Stock redeemed pursuant to this Section B.5 of Article Fourth shall be the per share Redeemable Liquidation Preference Amount (the "Redemption Price"). The aggregate Redemption Price shall be payable in cash in immediately available funds on the Redemption Date. Until the aggregate Redemption Price, including any interest thereon, has been paid in cash for all shares of Redeemable Preferred Stock redeemed as of the applicable Redemption Date or Redemption Notes have been issued pursuant to Section B.5(a)(i) of Article Fourth; (A) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any capital stock of the Corporation (other than the Redeemable Preferred Stock in accordance with Section B.5(d) of Article Fourth); and (B) no shares of capital stock of the Corporation (other than the Redeemable Preferred Stock in accordance with this Section B.5 of Article Fourth) shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

(c) Redemption Prohibited. If, at a Redemption Date, the Corporation is prohibited under the Delaware General Corporation Law from redeeming all shares of Redeemable Preferred Stock for which redemption is required hereunder, then it shall redeem such shares on a pro-rata basis among the holders of Redeemable Preferred Stock in proportion to the full respective redemption amounts to which they are entitled hereunder to the extent possible and shall redeem the remaining shares to be redeemed as soon as the Corporation is not prohibited from redeeming some or all of such shares under the Corporations Code of the State of Delaware, subject to the last paragraph of Section A.8 of Article Fourth. The shares of Redeemable Preferred Stock not redeemed shall remain outstanding and entitled to all of the rights and preferences provided in this Certificate of Incorporation. In the event that the Corporation fails for any reason to redeem shares for which redemption is triggered pursuant to Section B.5 of Article Fourth (other than pursuant to the third sentence of Section B.5(a)(i) of Article Fourth), including without limitation due to a prohibition of such redemption under the Corporations Code of the State of Delaware, then during the period from the applicable Redemption Date through the date on which such shares are redeemed, the applicable Redeemable Base Liquidation Amount of such shares shall bear interest at the greater of (i) 9% or (ii) 3% over the Citibank N.A. prime rate published in the Wall Street Journal on the Redemption Date, compounded annually; provided, however, that in no event shall such interest rate exceed the Maximum Permitted Rate.

(d) Dividend After Redemption Date. From and after the closing of a QPO or upon consummation of a Liquidation Event or a public offering not constituting a QPO (in the case of a redemption pursuant to Section B.5(a)(i) or (iv) of Article Fourth) or the date specified for redemption in the election notice as set forth in Section B.5(a)(ii) or (v) or Section B.5(b) of Article Fourth, no shares of Redeemable Preferred Stock subject to redemption shall be entitled to any further dividends pursuant to Section B.3 of Article Fourth hereof; provided, however,

that in the event that shares of Redeemable Preferred Stock are unable to be redeemed and continue to be outstanding in accordance with Section B.5(c) of Article Fourth, such shares shall continue to be entitled to dividends and interest thereon as provided in Sections B.3 and B.5(c) of Article Fourth until the date on which such shares are actually redeemed by the Corporation.

(e) Surrender of Certificates. The Corporation shall give, not less than 10 days prior to the Redemption Date, a Redemption Notice to all holders of the Redeemable Preferred Stock which shall require each holder submitting shares for redemption to surrender to the Corporation on or before the Redemption Date, at the place designated in the Redemption Notice, such holder's certificate or certificates representing the shares of Redeemable Preferred Stock to be redeemed. On or prior to the Redemption Date, each holder of shares of Redeemable Preferred Stock submitted for redemption shall surrender the certificate or certificates evidencing such shares to the Corporation, at the place designated in the Redemption Notice and shall thereupon be entitled to receive payment of the appropriate Redemption Price by certified check or wire transfer. In the event the certificates are lost, stolen or missing, the holder of Redeemable Preferred Stock shall deliver an Affidavit of Loss with respect to such certificates at the place set forth in the Redemption Notice. Each surrendered certificate shall be canceled and retired; provided, however, that if the holder has exercised its right pursuant to Section B.5(a)(iii)(A) of Article Fourth or the Corporation has exercised its right pursuant to Section B.5(a)(v)(A) of Article Fourth, the holder shall not be required to surrender said certificate(s) to the Corporation until said holder has received a new stock certificate for those shares of Redeemable Preferred Stock not so redeemed.

6. Notice. In the event that the Corporation provides or is required to provide notice to any holder of Convertible Preferred Stock or any holder of Common Stock in accordance with the provisions of this Certificate of Incorporation (including the provisions of Section A.9 of Article Fourth) and/or Corporation's bylaws, the Corporation shall at the same time provide a copy of any such notice to each holder of outstanding Redeemable Preferred Stock.

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

FIFTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the Bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

- B. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.
- C. On and after the closing date of the first sale of the Corporation's Common Stock pursuant to a firmly underwritten registered public offering (the "IPO"), any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. Prior to such sale, unless otherwise provided by law, any action which may otherwise be taken at any meeting of the stockholders may be taken without a meeting and without prior notice, if a written consent describing such actions is signed by the holders of outstanding shares having not less than the minimum number of votes which would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.
- D. Special meetings of stockholders of the Corporation may be called only (1) by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption) or (2) by the holders of not less than ten percent (10%) of all of the shares entitled to cast votes at the meeting.

SIXTH:

- A. The number of directors shall initially be set at six (6) and, thereafter, shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption). Upon the closing of the IPO, the directors shall be divided into three classes with the term of office of the first class (Class I) to expire at the first annual meeting of the stockholders following the IPO; the term of office of the second class (Class II) to expire at the second annual meeting of stockholders held following the IPO; the term of office of the third class (Class III) to expire at the third annual meeting of stockholders; and thereafter for each such term to expire at each third succeeding annual meeting of stockholders after such election. Subject to the rights of the holders of any series of Preferred Stock then outstanding, a vacancy resulting from the removal of a director by the stockholders as provided in Article SIXTH, Section C below may be filled at a special meeting of the stockholders held for that purpose. All directors shall hold office until the expiration of the term for which elected, and until their respective successors are elected, except in the case of the death, resignation, or removal of any director.

- B. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation or other cause (other than removal from office by a vote of the stockholders) may be filled only by a majority vote of the directors then in office, though less than a quorum, and directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders at which the term of office of the class to which they have been elected expires, and until their respective successors are elected, except in the case of the death, resignation, or removal of any director. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.
- C. Subject to the rights of the holders of any series of Preferred Stock then outstanding, any directors, or the entire Board of Directors, may be removed from office at any time, with or without cause, but only by the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Vacancies in the Board of Directors resulting from such removal may be filled by a majority of the directors then in office, though less than a quorum, or by the stockholders as provided in Article SIXTH, Section A above. Directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders at which the term of office of the class to which they have been elected expires, and until their respective successors are elected, except in the case of the death, resignation, or removal of any director.

SEVENTH: The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the Corporation. Any adoption, amendment or repeal of Bylaws of the Corporation by the Board of Directors shall require the approval of a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any resolution providing for adoption, amendment or repeal is presented to the Board). The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of Bylaws of the Corporation by the stockholders shall require, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

EIGHTH: A director of the Corporation shall not be personally liable to the Corporation or its ~~stockholders~~ for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) under Section 174 of

the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

If the Delaware General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing provisions of this Article EIGHTH by the stockholders 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.

NINTH: The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; provided, however, that, notwithstanding any other provision of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of this Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least 66-2/3% of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal this Article NINTH, Article FIFTH, Article SIXTH, Article SEVENTH or Article EIGHTH.

The Certificate of Incorporation of Finisar Delaware, as amended herein, shall continue to be the Certificate of Incorporation of Finisar Delaware as the surviving Corporation without change or amendment until further amended in accordance with the provisions thereof and applicable laws. The Bylaws of Finisar Delaware, in effect on the Effective Date, shall continue to be the Bylaws of Finisar Delaware as the surviving Corporation without change or amendment until further amended in accordance with the provisions thereof and applicable laws.

3. **Directors and Officers.** The directors and officers of Finisar California shall become the directors and officers of Finisar Delaware upon the Effective Date and any committee of the Board of Directors of Finisar California shall become the members of such committees for Finisar Delaware.

4. **Succession.** On the Effective Date, Finisar Delaware shall succeed to Finisar California in the manner of and as more fully set forth in Section 259 of the General Corporation Law of the State of Delaware.

5. **Further Assurances.** From time to time, as and when required by Finisar Delaware or by its successors and assigns, there shall be executed and delivered on behalf of Finisar California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest, perfect or confirm, of record or otherwise, in Finisar Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of

Finisar California, and otherwise to carry out the purposes of this Merger Agreement and the officers and directors of Finisar Delaware are fully authorized in the name and on behalf of Finisar California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

6. Stock of Finisar California.

a. Common Stock. Upon the Effective Date, by virtue of the Merger and without any action on the part of the holder thereof, each one share of Finisar California Common Stock outstanding immediately prior thereto shall be changed and converted into one fully paid and nonassessable share of Finisar Delaware Common Stock.

b. Preferred Stock. Upon the Effective Date, by virtue of the Merger and without any action on the part of the holder thereof, each one share of Finisar California Preferred Stock outstanding immediately prior thereto shall be changed and converted into one fully paid and nonassessable share of Finisar Delaware Preferred Stock.

7. Stock Certificates. On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of Finisar California stock shall be deemed for all purposes to evidence ownership of and to represent the shares of Finisar Delaware stock into which the shares of Finisar California stock represented by such certificates have been converted as herein provided. The registered owner on the books and records of Finisar Delaware or its transfer agent of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to Finisar Delaware or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of Finisar Delaware stock evidenced by such outstanding certificate as above provided.

8. Options, and All Other Rights to Purchase Stock. Upon the Effective Date, each outstanding option or other right to purchase shares of Finisar California stock, including those options granted under the 1999 and 1989 Stock Option Plans (the "Option Plans") of Finisar California, shall be converted into and become an option or right to purchase the same number of shares of Finisar Delaware stock upon the same terms and subject to the same conditions as set forth in the Option Plans and other agreements entered into by Finisar California pertaining to such options or rights. A number of shares of Finisar Delaware stock shall be reserved for purposes of such options and rights equal to the number of shares of Finisar California stock so reserved as of the Effective Date. As of the Effective Date, Finisar Delaware shall assume all obligations of Finisar California under agreements pertaining to such options and rights, including the Option Plans, and the outstanding options or other rights, or portions thereof, granted pursuant thereto.

9. Other Employee Benefit Plans. As of the Effective Date, Finisar Delaware hereby assumes all obligations of Finisar California under any and all employee benefit plans in effect as of said date or with respect to which employee rights or accrued benefits are outstanding as of said date.

10. Outstanding Common Stock of Finisar Delaware. Forthwith upon the Effective Date, the One Thousand (1,000) shares of Finisar Delaware Common Stock presently issued and outstanding in the name of Finisar California shall be canceled and retired and resume the status of authorized and unissued shares of Finisar Delaware Common Stock, and no shares of Finisar Delaware Common Stock or other securities of Finisar Delaware shall be issued in respect thereof.

11. Covenants of Finisar Delaware. Finisar Delaware covenants and agrees that it will, on or before the Effective Date:

a. Qualify to do business as a foreign corporation in the State of California, and in all other states in which Finisar California is so qualified and in which the failure so to qualify would have a material adverse impact on the business or financial condition of Finisar Delaware. In connection therewith, Finisar Delaware shall irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California Corporations Code and under applicable provisions of state law in other states in which qualification is required hereunder.

b. File any and all documents with the California Franchise Tax Board necessary to the assumption by Finisar Delaware of all of the franchise tax liabilities of Finisar California.

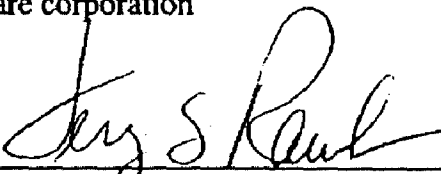
12. Amendment. At any time before or after approval and adoption by the stockholders of Finisar California, this Merger Agreement may be amended in any manner as may be determined in the judgment of the respective Boards of Directors of Finisar Delaware and Finisar California to be necessary, desirable or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purposes and intent of this Merger Agreement.

13. Abandonment. At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either Finisar California or Finisar Delaware or both, notwithstanding approval of this Merger Agreement by the sole stockholder of Finisar Delaware and the shareholders of Finisar California.


14. Counterparts. In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by resolution of the Board of Directors of Finisar California and Finisar Delaware, is hereby executed on behalf of each of said two corporations by their respective officers thereunto duly authorized.

FINISAR DELAWARE CORPORATION,
a Delaware corporation

By: 
Jerry S. Rawls, President

FINISAR CORPORATION,
a California corporation

By: 
Jerry S. Rawls, President

CERTIFICATE OF SECRETARY


OF

FINISAR DELAWARE CORPORATION

(a Delaware corporation)

I, Stephen K. Workman, the Secretary of Finisar Delaware Corporation, a Delaware corporation (the "Corporation"), hereby certify that the Agreement and Plan of Merger to which this Certificate is attached was duly signed on behalf of the Corporation by its President and was duly approved and adopted by a unanimous vote of the outstanding stock entitled to vote thereon by written consent of the sole stockholder of the Corporation dated November 3, 1999.

Executed effective on the 3rd day of November, 1999.



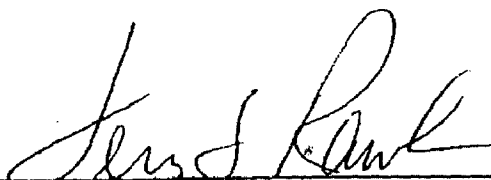
Stephen K. Workman, Secretary

CERTIFICATE OF APPROVAL OF
AGREEMENT AND PLAN OF MERGER OF
FINISAR CORPORATION
(a California corporation)

Jerry S. Rawls and Stephen K. Workman certify that:

1. They are the duly elected and acting President and Secretary, respectively, of Finisar Corporation, a California corporation (the "Corporation").
2. This Certificate is attached to the Agreement and Plan of Merger dated as of November 3, 1999, providing for the merger of the Corporation with and into a Delaware corporation.
3. The Agreement and Plan of Merger in the form attached hereto (the "Merger Agreement") was approved by the Board of Directors of the Corporation at a meeting duly noticed and held on September 9, 1999.
4. The total number of outstanding shares of the Corporation entitled to vote on the merger was 33,618,298 shares of Common Stock and 12,039,486 shares of Series A Convertible Redeemable Preferred Stock. No shares of Redeemable Preferred Stock are outstanding.
5. The principal terms of the Merger Agreement were approved by an affirmative vote which exceeded the vote required, such vote being a majority of the total number of outstanding shares of Common Stock, and a majority of the outstanding shares of the Series A Convertible Redeemable Preferred Stock, voting as separate classes.

Dated: November 3, 1999.



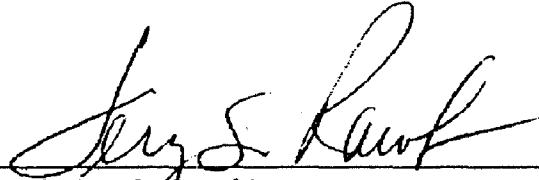
Jerry S. Rawls, President



Stephen K. Workman, Secretary

The undersigned, Jerry S. Rawls and Stephen K. Workman, President and Secretary, respectively, of Finisar Corporation, a California corporation, declare 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 their own knowledge.

Executed at Sunnyvale, California, on November 3, 1999.



Jerry S. Rawls, President



Stephen K. Workman, Secretary