

06-18-2002
102125336

Tab settings ⇌ ⇌ ⇌ ▼

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

1. Name of conveying party(ies):
Metricom, Inc. 6-11-02

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

Additional name(s) of conveying parties attached? Yes No

2. Name and address of receiving party(ies)

Name: Metricom, Inc.
Internal Address: _____
Street Address: 333 West Julian Street
City: San Jose State: CA ZIP: 95110

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

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: Effective April 14, 1992

4. Application Number(s) or Registration Number(s).

A. Trademark Application No(s): _____

B. Trademark Registration No(s):
1,849,034 UTILINET
1,613,592 METRICOM

Additional numbers attached? Yes No

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

Name: Lesley S. Craig
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
(415) 576-0200

06/17/2002 BTOM11 00000118 201430 1849034
01 FC:481 40.00 CH
02 FC:482 25.00 CH

6. Total number of applications and registrations involved 2

7. Total fee (37 CFR 3.41): \$65.00

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: 20-1430

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

DO NOT USE THIS SPACE

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

Stephen F. Jewett
Name of Person Signing

[Signature]
Signature

6/6/02
Date

Total number of pages including cover sheet, attachments and document: 32

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

Delaware

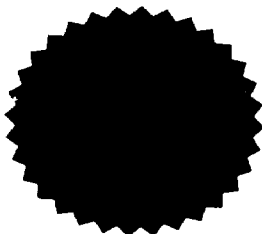
PAGE 1

The First State

I, HARRIET SMITH WINDSOR, 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:

"METRICOM, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "METRICOM (DELAWARE), INC." UNDER THE NAME OF "METRICOM, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FOURTEENTH DAY OF APRIL, A.D. 1992, AT 12:15 O'CLOCK P.M.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1770501

DATE: 05-10-02

2276962 8100M

020292987

TRADEMARK
REEL: 002527 FRAME: 0186

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (hereinafter called the "Merger Agreement") is made as of April 7, 1992, by and between Metricom, Inc., a California corporation ("Metricom California"), and Metricom (Delaware), Inc., a Delaware corporation ("Metricom Delaware"). Metricom California and Metricom Delaware are sometimes referred to as the "Constituent Corporations."

The authorized capital stock of Metricom California consists of thirty million (30,000,000) shares of Common Stock, no par value, and seventeen million six hundred thousand (17,600,000) shares of Preferred Stock, no par value, which in turn consists of 3,600,000 shares of Series A Preferred Stock, 6,000,000 shares of Series B Preferred Stock, 3,100,000 shares of Series B-1 Preferred Stock and 4,900,000 shares of Series C Preferred Stock. The authorized capital stock of Metricom Delaware, upon effectuation of the transactions set forth in this Merger Agreement, will consist of fifteen million (15,000,000) shares of Common Stock, \$0.001 par value, and eight million eight hundred thousand (8,800,000) shares of Preferred Stock, \$0.001 par value, which in turn will consist of 1,800,000 shares of Series A Preferred Stock, 4,550,000 shares of Series B Preferred Stock, and 2,450,000 shares of Series C Preferred Stock.

The directors of the Constituent Corporations deem it advisable and to the advantage of the Constituent Corporations that Metricom California merge into Metricom Delaware upon the terms and conditions herein provided.

NOW, THEREFORE, the parties do hereby adopt the plan of reorganization encompassed by this Merger Agreement and do hereby agree that Metricom California shall merge into Metricom Delaware on the following terms, conditions and other provisions:

I. TERMS AND CONDITIONS

1.1 Merger. Metricom California shall be merged with and into Metricom Delaware (the "Merger"), and Metricom Delaware shall be the surviving corporation (the "Surviving Corporation") effective upon the date when this Merger Agreement is filed with the Secretary of State of the State of Delaware (the "Effective Date").

1.2 Name Change. On the Effective Date, the name of Metricom Delaware shall be Metricom, Inc.

1.3 Succession. On the Effective Date, Metricom Delaware shall continue its corporate existence under the laws of the State of Delaware, and the separate existence and corporate

20387480
033192

1.

organization of Metricom California, except insofar as it may be continued by operation of law, shall be terminated and cease.

1.4 Transfer of Assets and Liabilities. On the Effective Date, the rights, privileges, powers and franchises, both of a public as well as of a private nature, of each of the Constituent Corporations shall be vested in and possessed by the Surviving Corporation, subject to all of the disabilities, duties and restrictions of or upon each of the Constituent Corporations; and all and singular rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, of each of the Constituent Corporations, and all debts due to each of the Constituent Corporations on whatever account, and all things in action or belonging to each of the Constituent Corporations shall be transferred to and vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest, shall be thereafter the property of the Surviving Corporation as they were of the Constituent Corporations, and the title to any real estate vested by deed or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger; provided, however, that the liabilities of the Constituent Corporations and of their shareholders, directors and officers shall not be affected and all rights of creditors and all liens upon any property of either of the Constituent Corporations shall be preserved unimpaired, and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place except as they may be modified with the consent of such creditors and all debts, liabilities and duties of or upon each of the Constituent Corporations shall attach to the Surviving Corporation, and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

1.5 Common Stock of Metricom California and Metricom Delaware. On the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, (i) each two (2) shares of Common Stock of Metricom California issued and outstanding immediately prior thereto shall be combined, changed and converted into one (1) fully paid and nonassessable share of the Common Stock of Metricom Delaware; (ii) resulting fractional shares shall not be issued, but holders of fractional shares shall be compensated, based upon the fair market value of such fractional shares on the Effective Date, as determined by the Board of Directors; and (iii) each share of Common Stock of Metricom California issued and outstanding immediately prior thereto shall be cancelled and returned to the status of authorized but unissued shares.

1.6 Preferred Stock of Metricom California and Metricom Delaware. On the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, (i) each two (2) shares of Series A Preferred Stock of Metricom California issued and outstanding immediately prior thereto shall be combined, changed and converted into one (1) fully paid and nonassessable share of Series A Preferred Stock of Metricom Delaware, (ii) each two (2) shares of Series C Preferred Stock of Metricom California issued and outstanding immediately prior thereto shall be changed and converted into one (1) fully paid and nonassessable share of Series C Preferred Stock of Metricom Delaware, and (iii) resulting fractional shares shall not be issued, but holders of fractional shares shall be compensated, based upon the fair market value of such fractional shares on the Effective Date, as determined by the Board of Directors.

1.7 Stock Certificates. On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of the Common Stock or of the Preferred Stock of Metricom California shall be deemed for all purposes to evidence ownership of and to represent the shares of Metricom Delaware into which the shares of Metricom California represented by such certificates have been converted as herein provided and shall be so registered on the books and records of the Surviving Corporation or its transfer agents. The registered owner of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation 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 Metricom Delaware evidenced by such outstanding certificate as above provided.

1.8 Warrants. On the Effective Date, Metricom Delaware shall assume and continue all of Metricom California's warrants, and the outstanding and unexercised portions of all warrants to purchase Preferred Stock of Metricom California shall be combined, changed, and converted into warrants of Metricom Delaware, such that a warrant for two (2) shares of Metricom California shall be converted into a warrant for one share of Metricom Delaware, with a proportional increase in the exercise price of the Metricom Delaware warrant. No other changes in the terms and conditions of such warrants will occur. Effective on the Effective Date, Metricom Delaware hereby assumes the outstanding and unexercised portions of such warrants and the obligations of Metricom Delaware with respect thereto.

1.9 Options. On the Effective Date, the Surviving Corporation will assume and continue Metricom California's 1988 Stock Option Plan and the outstanding and unexercised portions of all

options to purchase Common Stock of Metricom California, including without limitation all options outstanding under such stock option plan and any other outstanding options, shall be combined, changed, and converted into options of Metricom Delaware, such that an option for two (2) shares of Metricom California shall be converted into an option for one share of Metricom Delaware, with a proportional increase in the exercise price of the Metricom Delaware option. No other changes in the terms and conditions of such options will occur. Effective on the Effective Date, Metricom Delaware hereby assumes the outstanding and unexercised portions of such options and the obligations of Metricom California with respect thereto.

1.10 Employee Benefit Plans. On the Effective Date, the Surviving Corporation shall assume all obligations of Metricom California under any and all employee benefit plans in effect as of such date with respect to which employee rights or accrued benefits are outstanding as of such date; provided, however, that one share Common Stock of Metricom Delaware shall be substituted for each two (2) shares of Common Stock of Metricom California (if any) thereunder. On the Effective Date, the Surviving Corporation shall adopt and continue in effect all such employee benefit plans upon the same terms and conditions as were in effect immediately prior to the Merger and shall reserve that number of shares of Metricom Delaware Common Stock with respect to each such employee benefit plan as is proportional to the number of shares of Metricom California Common Stock (if any) so reserved on the Effective Date.

II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation and Bylaws. From and after the Effective Date, the certificate of incorporation of Metricom Delaware shall read as amended in its entirety as set forth in full in Annex 1 attached hereto and hereby made a part hereof. The Bylaws of Metricom Delaware in effect on the Effective Date shall continue to be the Bylaws of the Surviving Corporation without change or amendment until further amended in accordance with the provisions thereof and applicable law.

2.2 Directors. The following persons shall become the directors of the Surviving Corporation on and after the Effective Date to serve until the expiration of their terms and until their successors are elected and qualified:

Robert P. Dilworth
Paul Baran
Cornelius C. Bond, Jr.

Frank W. Griffith
John W. Hanes, Jr.
George W. Levert
Wu Chen Jai

2.3 Officers. The following persons shall become the officers of the Surviving Corporation on and after the Effective Date, holding the offices designated, to serve at the pleasure of its Board of Directors:

Robert P. Dilworth	President and Chief Executive Officer
William D. Swain	Chief Financial Officer and Secretary
Gary M. Green	Executive Vice President and Chief Operating Officer
LeRoy D. Nosbaum	Executive Vice President, Marketing
Stephens F. Millard	Vice President, Corporate Development

III. MISCELLANEOUS

3.1 Further Assurances. From time to time, and when required by the Surviving Corporation or by its successors and assigns, there shall be executed and delivered on behalf of Metricom 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 or perfect in or to conform of record or otherwise, in the Surviving Corporation the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Metricom California and otherwise to carry out the purposes of this Merger Agreement, and the officers and directors of the Surviving Corporation are fully authorized in the name and on behalf of Metricom California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

3.2 Amendment. At any time before or after approval by the shareholders of Metricom California, this Merger Agreement may be amended in any manner (except that, after the approval of the Merger Agreement by the shareholders of Metricom California, the principal terms may not be amended without the further approval of the shareholders of Metricom California) as may be determined in the judgment of the respective Board of Directors of Metricom Delaware and Metricom California to be necessary, desirable, or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purpose and intent of this Merger Agreement.

3.3 Conditions to Merger. The obligation of the Constituent Corporations to effect the transactions contemplated hereby

is subject to satisfaction of the following conditions (any or all of which may be waived by either of the Constituent Corporations in its sole discretion to the extent permitted by law):

(a) the Merger shall have been approved by the shareholders of Metricom California in accordance with applicable provisions of the General Corporation Law of the State of California; and

(b) Metricom California, as sole stockholder of Metricom Delaware, shall have approved the Merger in accordance with the General Corporation Law of the State of Delaware; and

(c) any and all consents, permits, authorizations, approvals, and orders deemed in the sole discretion of Metricom California to be material to consummation of the Merger shall have been obtained.

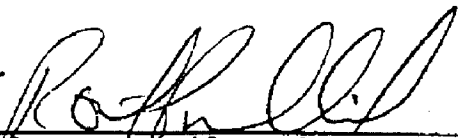
3.4 Abandonment or Deferral. At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either Metricom California or Metricom Delaware or both, notwithstanding the approval of this Merger Agreement by the shareholders of Metricom California or Metricom Delaware, or the consummation of the Merger may be deferred for a reasonable period of time if, in the opinion of the Boards of Directors of Metricom California and Metricom Delaware, such action would be in the best interest of such corporations. In the event of termination of this Merger Agreement, this Merger Agreement shall become void and of no effect and there shall be no liability on the part of either Constituent Corporation or its Board of Directors or shareholders with respect thereto, except that Metricom California shall pay all expenses incurred in connection with the Merger or in respect of this Merger Agreement or relating thereto.

3.5 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.


20387480
033192

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


METRICOM, INC.
A California Corporation

By 
Robert P. Dilworth
President and
Chief Executive Officer


ATTEST:


James C. Gaither
Secretary

METRICOM (DELAWARE), INC.
A Delaware Corporation

By 
Robert P. Dilworth
President and
Chief Executive Officer

ATTEST:


William D. Swain
Secretary

METRICOM, INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, Robert P. Dilworth and James C. Gaither, do hereby certify that:


1. They are the President and Secretary, respectively, of Metricom, Inc., a California corporation (the "Corporation").

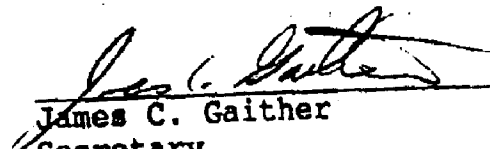
2. The Agreement and Plan of Merger attached to this Certificate providing for the merger of the Corporation with and into Metricom (Delaware), Inc., a Delaware corporation, was duly approved by the Board of Directors and by the shareholders of the Corporation.

3. The Corporation has two authorized classes of shares, designated Common Stock and Preferred Stock. The number of shares of Common Stock outstanding and entitled to vote upon the merger was 4,733,993 shares. The number of shares of Preferred Stock outstanding and entitled to vote upon the merger was 7,319,395 shares.

4. The terms of the Agreement and Plan of Merger were approved by the Corporation by the vote of the number of shares of Common Stock and Preferred Stock of the Corporation which equaled or exceeded the vote required. The percentage vote required for the Common Stock for such approval was more than fifty percent (50%). The percentage vote required for the Preferred Stock for such approval was more than fifty percent (50%).


IN WITNESS WHEREOF, the undersigned have executed this Certificate this 7th day of April, 1992.


Robert P. Dilworth
President


James C. Gaither
Secretary

Each of the undersigned declares under penalty of perjury that he has read the foregoing Certificate and knows the contents thereof and that the same is true of his own knowledge.

Executed at Los Gatos, California on April 7, 1992.


Robert P. Dilworth
President


James C. Gaither
Secretary

20446544
033192

2.

TRADEMARK
REEL: 002527 FRAME: 0195

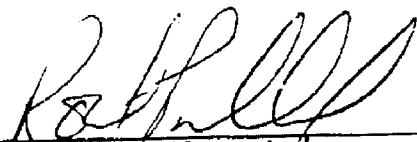
METRICOM (DELAWARE), INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

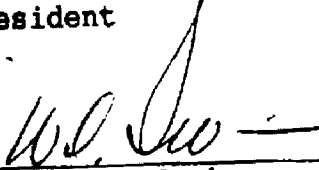
The undersigned, Robert P. Dilworth and William D. Swain, do hereby certify that:

1. They are the President and Secretary, respectively, of Metricom (Delaware), Inc., a Delaware corporation (the "Corporation").
2. The Agreement and Plan of Merger attached to this Certificate providing for the merger of Metricom, Inc., a California corporation, with and into the Corporation was duly approved by the Board of Directors and by the stockholders of the Corporation.
3. The Corporation has two authorized classes of shares, designated Common Stock and Preferred Stock. The number of shares of Common Stock outstanding and entitled to vote upon the merger was One Hundred (100) shares of Common Stock. There are no shares of Preferred Stock outstanding.
4. The terms of the Agreement and Plan of Merger were approved by the Corporation by the vote of the number of shares of Common Stock of the Corporation which equaled or exceeded the vote required. The percentage vote required for such approval was more than fifty percent (50%).

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 7th day of April, 1992.



Robert P. Dilworth
President



William D. Swain
Secretary


20446543
033192

1.

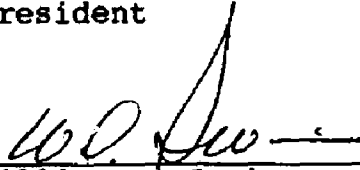
TRADEMARK
REEL: 002527 FRAME: 0196

Each of the undersigned declares under penalty of perjury that he has read the foregoing Certificate and knows the contents thereof and that the same is true of his own knowledge.

Executed at Los Gatos, California on April 7, 1992.



Robert P. Dilworth
President



William D. Swain
Secretary

20446543
033192

AMENDED
CERTIFICATE OF INCORPORATION
OF
METRICOM, INC.

Annex 1

I.

The name of this corporation is Metricom, Inc.

II.

The address of the registered office of the corporation in the State of Delaware is 32 Loockermen Square, Suite L-100, City of Dover, County of Kent, and the name of the registered agent of the corporation in the State of Delaware at such address is The Prentice-Hall Corporation System, Inc.

III.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

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

B. The Corporation is authorized to provide indemnification of agents (as defined in Section 145 of the Delaware General Corporation Law) for breach of duty to the Corporation and its stockholders through bylaw provisions, through agreements with the agents, and/or through stockholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 145 of the Delaware General Corporation Law.

C. Any repeal or modification of this Article III shall be prospective and shall not affect the rights under this Article III in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

IV.

A. This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is twenty three million eight hundred thousand (23,800,000) shares. Fifteen million (15,000,000) shares shall be Common Stock, each having a par value of one tenth of one cent (\$.001). Eight million eight

20396062
040692

1.

TRADEMARK
REEL: 002527 FRAME: 0198

hundred thousand (8,800,000) shares shall be Preferred Stock, each having a par value of one tenth of one cent (\$.001), of which one million eight hundred thousand (1,800,000) shares shall be designated Series A Preferred Stock, four million five hundred fifty thousand (4,550,000) shares shall be designated Series B Preferred Stock, and two million four hundred fifty thousand (2,450,000) shall be designated Series C Preferred Stock.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, by filing a certificate pursuant to the Delaware General Corporation Law, to fix or alter from time to time the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof, including without limitation the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and the liquidation preferences of any wholly unissued series of Preferred Stock, and to establish from time to time the number of shares constituting any such series and the designation thereof, or any of them (a "Preferred Stock Designation"); and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. No share or shares of any series of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued as part of such series, and the Board of Directors is authorized, pursuant to Section 243 of the Delaware General Corporation Law, to retire any such share or shares. The retirement of any such share or shares shall not reduce the total authorized number of shares of Preferred Stock.

D. The respective rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred Stock and Series C Preferred Stock (sometimes collectively referred to herein as the "Designated Preferred Stock") are as follows:

Section 1. Dividend Rights

1.1 Declaration. In preference and priority to the payment of any dividend on any outstanding shares of Common Stock of the Corporation, the holders of Series A Preferred Stock and Series C Preferred Stock shall be entitled to receive, out of any funds legally available therefor, dividends at the respective rates of \$.08 per share and \$.62 per share (adjusted for any

stock dividends, combinations or splits with respect to such shares) per annum, on each outstanding share of Series A Preferred Stock and Series C Preferred Stock, all such dividends when and as declared by the Board of Directors. The right to such dividends shall not be cumulative, and no right shall accrue to the holders of Series A Preferred Stock or Series C Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any prior fiscal year. No shares of Common Stock shall receive any dividend at a rate which is greater than the rate at which dividends are simultaneously paid in respect of the Series A Preferred Stock or Series C Preferred Stock (based on the number of shares of Common Stock into which each such series is convertible on the record date of such dividend). Each share of Series A Preferred Stock and Series C Preferred Stock shall be in pari passu with each other share of Designated Preferred Stock with respect to dividend rights.

1.2 Payment. Dividends shall be paid by forwarding a check, postage prepaid, to the address of each holder (or, in the case of joint holders, to the address of any such holder) of Designated Preferred Stock as shown on the books of the Corporation, or to such other address as such holder specifies for such purpose by written notice to the Corporation. The forwarding of such check shall satisfy all obligations of the Corporation with respect to such dividends, unless such check is not paid upon timely presentation.

Section 2. Liquidation Rights

2.1 Rights. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or not, the holders of Series A Preferred Stock and Series C Preferred Stock shall be entitled to receive, before any amount shall be paid to the holders of Common Stock, respective amounts per share equal to \$1.00 and \$7.811 (as adjusted for stock splits, combination or similar events and hereafter referred to as the "Series A Original Issue Price" and the "Series C Original Issue Price," respectively), plus all declared and unpaid dividends, if any. Each share of Series A Preferred Stock and Series C Preferred Stock shall be in pari passu with each other share of Designated Preferred Stock with respect to liquidation rights. If, upon the occurrence of a liquidation, dissolution or winding up of the Corporation, the assets or surplus funds distributed among the holders of Series A Preferred Stock and Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amounts set forth above, then the entire assets and surplus funds of the Corporation legally available for distribution shall be distributed pro rata among the holders of Series A Preferred Stock and Series C Preferred Stock on a share by share basis in proportion to the aggregate preferential amounts of the Series A Preferred Stock and the Series C Preferred Stock.

(b) If, upon the occurrence of a liquidation, dissolution or winding up of the Corporation, after payment of the liquidation preferences per share on the Designated Preferred Stock referred to in subsection 2.1 (a) above, assets or surplus funds remain in the Corporation, the holders of Common Stock shall be entitled to share on a pro rata basis in all remaining assets and surplus funds.

2.2 Merger. For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, the Corporation's sale of all or substantially all of its assets or the acquisition of the Corporation by another entity by means of merger or consolidation resulting in the exchange of the outstanding shares of this Corporation for securities or consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary. No later than 20 days before any event that, pursuant to Section 5.5, permits a holder of Designated Preferred Stock to have each share of Designated Preferred Stock held by such holder treated for all purposes as if it had been converted into Common Stock (for purposes of this Section 2, a "Merger or Sale of Corporation"), the Corporation shall deliver a notice to each holder of Designated Preferred Stock setting forth the principal terms of such Merger or Sale of Corporation. Such notice shall be deemed delivered upon personal delivery or five days after deposit in the United States mail, by registered or certified mail, addressed to a party at its address as shown on the stock records of the Corporation. Such notice shall include a description of the amounts that would be paid to holders of Series A Preferred Stock and Series C Preferred Stock under this Section 2 and of the consideration that such holders would receive if they exercised their rights under Section 6.5 to have shares of Series A Preferred Stock and Series C Preferred Stock treated as if they had been converted into Common Stock. No later than 10 days after delivery of the notice, each holder of Designated Preferred Stock may deliver an election to the Corporation notifying the Corporation that the holder desires that such holder's shares of Series A Preferred Stock or Series C Preferred Stock be treated, pursuant to Section 5, as if they had been converted into shares of Common Stock and, if no such notice is delivered, such holder shall receive such amounts as are provided for under this Section 2.

2.3 Authorized Repurchases. Each holder of an outstanding share of Designated Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code, to distributions made by the Corporation in connection with the repurchase at cost (or such other price as may be agreed to by the Corporation's Board of Directors) of shares of Common Stock issued to or held by officers, directors or employees of, or consultants to, the

20396062
040692

4.

TRADEMARK
REEL: 002527 FRAME: 0201

Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements (whether now existing or hereafter entered into) providing for the right of said repurchase between the Corporation and such persons.

Section 3. Voting Rights

Except as otherwise required by law, the holders of Series A Preferred Stock and Series C Preferred Stock and the holders of Common Stock shall be entitled to notice of any stockholders' meeting and to vote upon any matter submitted to the stockholders for a vote, as follows: (i) the holders of Series A Preferred Stock shall have one vote for each full share of Common Stock into which their shares of Series A Preferred Stock are convertible on the record date for the vote; (ii) the holders of Series C Preferred Stock shall have one vote for each full share of Common Stock into which their shares of Series C Preferred Stock are convertible on the record date for the vote; and (v) the holders of Common Stock shall have one vote per share of Common Stock.

Section 4. Certain Taxes

The Corporation shall pay any and all issuance and other taxes (excluding any federal or state income taxes) that may be payable in respect of any issuance or delivery of shares of Common Stock on conversion of Designated Preferred Stock. The Corporation shall not, however, be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Designated Preferred Stock to which any issuance relates were registered, and no such issuance or delivery shall be made unless and until the person requesting such issuance has paid to the Corporation the amount of any such tax, or it is established to the satisfaction of the Corporation that such tax has been paid.

Section 5. Conversion to Common Stock

The Series A Preferred Stock and Series C Preferred Stock shall be convertible into Common Stock of the Corporation as follows:

5.1 Definitions. For purposes of this Section 5 the following definitions shall apply:

5.1.1 "Series A Issuance Date" shall mean the first date on which the Corporation issued any shares of Series A Preferred Stock.

5.1.2 "Series C Issuance Date" shall mean the first date on which the Corporation issues any shares of Series C Preferred Stock.

5.1.3 "Conversion Price" shall mean the price, determined pursuant to this Section 5, at which shares of Common Stock shall be deliverable upon conversion of Series A Preferred Stock and Series C Preferred Stock, as the case may be.

5.1.4 "Current Conversion Price" shall mean the Conversion Price immediately before the occurrence of any event, which, pursuant to Section 5.3, causes an adjustment to the Conversion Price.

5.1.5 "Convertible Securities" shall mean any indebtedness or shares of stock convertible into or exchangeable for Common Stock, including Preferred Stock.

5.1.6 "Options" shall mean any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

5.1.7 "Common Stock Outstanding" shall mean the aggregate of all Common Stock outstanding and all Common Stock issuable upon exercise of all outstanding Options and conversion of all outstanding Convertible Securities.

5.1.8 "Distribution" shall have the meaning of the term "distribution to its stockholders" set forth in Section 166 of the California Corporations Code as in effect on the date of filing of these Restated Articles of Incorporation.

5.1.9 "Common Stock Equivalents" shall mean Convertible Securities and rights entitling the holder thereof to receive directly, or indirectly, additional shares of Common Stock without the payment of any consideration by such holder for such additional shares of Common Stock or Common Stock Equivalents.

5.2 Right to Convert; Initial Conversion Price. Each holder of the Series A Preferred Stock and Series C Preferred Stock may convert any or all of such Series A Preferred Stock and Series C Preferred Stock, respectively, into fully-paid and non-assessable shares of Common Stock at the Conversion Price applicable to that series. Each share of Series A Preferred Stock shall be convertible into the number of shares of Common Stock that results from dividing the Conversion Price in effect at the time of conversion for that series of Preferred Stock into \$1.00 for each share of Series A Preferred Stock being converted. Each share of Series C Preferred Stock shall be convertible into the number of shares of Common Stock that results from dividing the Conversion Price in effect at the time of conversion for the

Series C Preferred Stock into \$7.811 for each share of Series C Preferred Stock being converted. The initial Conversion Price for each series of Preferred Stock shall be subject to adjustment from time to time in certain instances as hereinafter provided. No adjustments with respect to conversion shall be made on account of any dividends that may be declared but unpaid on the Series A Preferred Stock or Series C Preferred Stock surrendered for conversion, but no dividends shall thereafter be paid on the Common Stock unless such unpaid dividends have first been paid to the holders entitled to payment at the time of conversion of the Series A Preferred Stock and Series C Preferred Stock.

5.2.1 Series A Preferred Stock. The Conversion Price for the Series A Preferred Stock shall initially be \$1.00 per share of Common Stock. The Series A Preferred Stock shall be convertible at any time after the Series A Issuance Date.

5.2.2 Series C Preferred Stock. The Conversion Price for the Series C Preferred Stock shall initially be \$7.811 per share of Common Stock. The Series C Preferred Stock shall be convertible at any time after the Series C Issuance Date.

5.2.3 Method of Conversion. Before any holder of Series A Preferred Stock or Series C Preferred Stock shall be entitled to convert the same into Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, to the office of the Corporation or any transfer agent for such Series A Preferred Stock or Series C Preferred Stock, respectively, and shall give written notice to the Corporation at such office that he elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock or Series C Preferred Stock, or to his nominee or nominees, certificates for the number of full shares of Common Stock to which he shall be entitled, together with cash in lieu of any fraction of a share as hereinafter provided, and, if less than all of the shares of Series A Preferred Stock or Series C Preferred Stock, respectively, represented by such certificate are converted, a certificate representing the shares of Series A Preferred Stock or Series C Preferred Stock not converted. Such conversion shall be deemed to have been made as of the date of such surrender of the certificate for the Series A Preferred Stock or Series C Preferred Stock to be converted, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on such date. If the conversion is in connection with an offer of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Series A Preferred Stock or Series C Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock

issuable upon such conversion of the Series A Preferred Stock or Series C Preferred Stock shall not be deemed to have converted such Series A Preferred Stock or Series C Preferred Stock until immediately prior to the closing of such sale of securities.

5.3 Adjustments to Conversion Price. The Conversion Price in effect from time to time for each series of Preferred Stock shall be subject to adjustment in certain cases as follows:

5.3.1 Issuance of Securities. In case the Corporation shall (i) at any time after the Series A Issuance Date, issue or sell any Common Stock or Convertible Securities without consideration, or for a consideration per share less than the Current Conversion Price for the Series A Preferred Stock, or (ii) at any time after the Series C Issuance Date, issue or sell any Common Stock or Convertible Securities without consideration or for a consideration per share less than the Current Conversion Price for the Series C Preferred Stock, then, and thereafter successively upon each such issuance or sale, the Current Conversion Price for each series of Preferred Stock whose Current Conversion Price exceeds such new consideration per share shall, except as provided in Section 5.4.2, simultaneously with such issuance or sale be adjusted to a Conversion Price (calculated to the nearest cent) determined by dividing

(a) an amount equal to (i) the total number of shares of Common Stock Outstanding when the Current Conversion Price for such series became effective multiplied by the Current Conversion Price for such series, plus (ii) the aggregate of the amount of all consideration, if any, received by the Corporation for the issuance or sale of Common Stock since the Current Conversion Price became effective, by

(b) the total number of shares of Common Stock Outstanding immediately after such issuance or sale;

provided, however, that the Conversion Price for the Series A Preferred Stock shall at no time exceed \$1.00 and the Conversion Price for the Series C Preferred Stock shall at no time exceed \$7.811 (as adjusted in each case for stock splits, combinations and similar events).

For the purposes of this subsection 5.3.1, the following provisions shall also be applicable:

5.3.1.1 Cash Consideration. In case of the issuance or sale of additional Common Stock for cash, the consideration received by the Corporation therefor shall be deemed to be the amount of cash received by the Corporation for

such shares (or, if such shares are offered by the Corporation for subscription, the subscription price, or, if such shares are sold to underwriters or dealers for public offering without a subscription offering, the initial public offering price), without deducting therefrom any compensation or discount paid or allowed to underwriters or dealers or others performing similar services or for any expenses incurred in connection therewith.

5.3.1.2 Non-Cash Consideration. In case of the issuance (otherwise than upon conversion or exchange of Convertible Securities) or sale of additional Common Stock, Options or Convertible Securities for a consideration other than cash or a consideration a part of which shall be other than cash, the fair value of such consideration as determined by the Board of Directors of the Corporation in the good faith exercise of its business judgment, irrespective of the accounting treatment thereof, shall be deemed to be the value, for purposes of this Section 5, of the consideration other than cash received by the Corporation for such securities.

5.3.1.3 Options and Convertible Securities. In case the Corporation shall in any manner issue or grant any Options or any Convertible Securities, the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities at the time such Convertible Securities first become convertible or exchangeable shall (as of the date of issue or grant of such Options or, in the case of the issue or sale of Convertible Securities other than where the same are issuable upon the exercise of Options, as of the date of such issue or sale) be deemed to be issued and to be outstanding for the purpose of this Section 5.3.1 and to have been issued for the sum of the amount (if any) paid for such Options or Convertible Securities and the amount (if any) payable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities at the time such Convertible Securities first become convertible or exchangeable; provided, however, that, subject to the provisions of Section 5.3.2, no further adjustment of the Conversion Price shall be made upon the actual issuance of any such Common Stock or Convertible Securities or upon the conversion or exchange of any such Convertible Securities.

5.3.2 Change in Option Price or Conversion Rate. In the event that the purchase price provided for in any Option referred to in subsection 5.3.1.3, or the additional consideration (if any) payable upon the conversion or exchange of any Convertible Securities referred to in subsection 5.3.1.3, or the rate at which any Convertible Securities referred to in subsection 5.3.1.3 are convertible into or exchangeable for shares of Common Stock, shall change at any time (whether under or by reason of provisions designed to protect against dilution

or otherwise), the Current Conversion Price for each series of Preferred Stock in effect at the time of such event shall be readjusted, effective upon such change becoming effective, to the Conversion Price that would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; provided, however that no such adjustment to the Conversion Price shall effect Common Stock previously issued upon exercise of options or upon conversion of any shares of Designated Preferred Stock.

5.3.3 Termination of Option or Conversion Rights. In the event of the termination or expiration of any right to purchase Common Stock under any Option or of any right to convert or exchange Convertible Securities, the Current Conversion Price for each series of Preferred Stock shall, upon such termination, be changed to the Conversion Price that would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued, and the shares of Common Stock issuable thereunder shall no longer be deemed to be Common Stock Outstanding.

5.3.4 Stock Splits, Dividends, Distributions and Combinations. In the event the Corporation should at any time or from time to time (i) as to the Series A Preferred Stock, after the Series A Issuance Date or (ii) as to the Series C Preferred Stock, after the Series C Issuance Date, fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other Distribution payable in additional shares of Common Stock or Common Stock Equivalents, then, following such record date (or the date of such dividend, Distribution, split or subdivision if no record date is fixed), the Conversion Price for one or both series, as the case may be, shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred Stock or Series C Preferred Stock, as the case may be, shall be increased in proportion to such increase in the number of outstanding shares of Common Stock (including for this purpose, Common Stock Equivalents) determined in accordance with Section 5.3.6. If the number of shares of Common Stock outstanding at any time (i) as to the Series A Preferred Stock, after the Series A Issuance Date or (ii) as to the Series C Preferred Stock, after the Series C Issuance Date, is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred Stock or

Series C Preferred Stock, as the case may be, shall be decreased in proportion to such decrease in the number of outstanding shares of Common Stock.

5.3.5 Other Dividends. In the event this Corporation shall (i) as to the Series A Preferred Stock, after the Series A Issuance Date or (ii) as to the Series C Preferred Stock, after the Series C Issuance Date, declare a Distribution payable in securities of other persons, evidence of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 5.3.1.3, then, in each such case for the purpose of this Section 5.3.5, the holders of Series A Preferred Stock or Series C Preferred Stock, as the case may be, shall be entitled to a proportionate share of any such Distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock or Series C Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such Distribution.

5.3.6 Recapitalizations. If at any time or from time to time (i) as to the Series A Preferred Stock, after the Series A Issuance Date or (ii) as to the Series C Preferred Stock, after the Series C Issuance Date, there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or a sale of assets transaction provided for elsewhere in this Section 5), provision shall be made so that the holders of Series A Preferred Stock or Series C Preferred Stock, as the case may be, shall thereafter be entitled to receive upon conversion of shares of Series A Preferred Stock or Series C Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Series A Preferred Stock and Series C Preferred Stock after the recapitalization to the end that the provisions of this Section 5 (including adjustment of the Conversion Prices then in effect and the number of shares of Common Stock to be delivered upon conversion of shares of Series A Preferred Stock and Series C Preferred Stock) shall be applicable after that event as nearly equivalently as may be practicable.

5.3.7 Successive Changes. The above provisions of this Section 5 shall similarly apply to successive issuances, sales, dividends or other Distributions, subdivisions and combinations on or of the Common Stock (i) as to the Series A Preferred Stock, after the Series A Issuance Date or (ii) as to the Series C Preferred Stock, after the Series C Issuance Date.

5.3.8 No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series A Preferred Stock and Series C Preferred Stock against impairment.

5.3.9 Miscellaneous Conversion Price Matters. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the number of full shares of Common Stock deliverable upon conversion of all the then outstanding Series A Preferred Stock and Series C Preferred Stock and shall, at its own expense, take all such actions and obtain all such permits and orders as may be necessary to enable the Corporation lawfully to issue such Common Stock upon the conversion of such Series A Preferred Stock and Series C Preferred Stock.

5.3.10 Excluded Events. Notwithstanding anything in this Section 5 to the contrary, the Conversion Prices of the Series A Preferred Stock and Series C Preferred Stock shall not be adjusted by virtue of (i) the conversion of shares of Series A Preferred Stock or Series C Preferred Stock into shares of Common Stock or the fixing or adjustment of the Conversion Price for any of such series of Preferred Stock, (ii) the repurchase of shares from the Corporation's employees, consultants, officers or directors at such person's cost (or at such other price as may be agreed to by the Corporation's Board of Directors), (iii) the issuance and sale of, or the grant of options to purchase, shares of Common Stock to employees, advisors, directors, officers or consultants of the Corporation and its subsidiaries at a price which is less than the Conversion Price for any series of Preferred Stock at the time of such issuance or sale (all as determined in accordance with this Section 5) as may be approved by the Board of Directors, provided, however, that the aggregate number of such shares, net of any repurchases pursuant to clause (ii), issued since the formation of the Corporation shall not exceed 6,572,092, and none of such shares referred to in this clause (iii) shall be included in any manner in the computation from time to time of the Conversion Price for any series of Preferred Stock under Section 5.3.1 or in Common Stock Outstanding for purposes of such computation, or (iv) the issuance of up to 721,076 shares of Common Stock in connection with the exercise of the Company's

rights under certain put agreements dated September 26, 1990 and November 5, 1990.

5.3.11 No Fractional Shares. No fractional shares shall be issued upon conversion of shares of Series A Preferred Stock or Series C Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock or Series C Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

5.3.12 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series A Preferred Stock or Series C Preferred Stock pursuant to this Section 5, the Corporation, at its expense upon request by any holder of any such series of Preferred Stock, shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock and Series C Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock or Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Current Conversion Prices at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Preferred Stock or Series C Preferred Stock.

5.4 Automatic Conversion.

5.4.1 Automatic Conversion upon Public Offering. Immediately upon the closing of the sale to the public in an offering of the Corporation's Common Stock registered under the Securities Act of 1933, as amended, on Form S-1 by the Corporation (or selling stockholders, if any) at a per share public offering price of not less than \$8.00 (as equitably adjusted for any stock split, combination or similar event) and an aggregate public offering price greater than \$6,000,000, each share of Series A Preferred Stock and Series C Preferred Stock shall automatically be converted into shares of Common Stock at the respective Conversion Prices then in effect. On and after such conversion date, notwithstanding that any certificates for the shares of Series A Preferred Stock or Series C Preferred Stock shall not have been surrendered for conversion, the shares of Series A Preferred Stock and Series C Preferred Stock evidenced thereby shall be deemed to be no longer outstanding,

and all rights with respect thereto shall forthwith cease and terminate, except only the rights of the holder (i) to receive the shares of Common Stock to which he shall be entitled upon conversion thereof, (ii) to receive the amount of cash payable in respect of any fractional share of Common Stock to which he shall be entitled, and (iii) with respect to dividends declared but unpaid on the Series A Preferred Stock or Series C Preferred Stock prior to such conversion date. In the event that any holder of Series A Preferred Stock or Series C Preferred Stock presents such holder's certificate therefor for surrender to the Company or its transfer agent upon such conversion, a certificate for the number of shares of Common Stock into which the shares of Series A Preferred Stock or Series C Preferred Stock surrendered were convertible on such conversion date promptly will be issued and delivered to such holder.

5.4.2 Automatic Conversion upon Dilutive Issuance. If the Corporation shall at any time as to the Series A Preferred Stock, after the Series A Issuance Date propose to issue or sell any securities without consideration, or for a consideration per share less than the Current Conversion Price for such series (a "Dilutive Issuance"), the Corporation shall provide at least 30 days' advance written notice of such proposed issuance or sale to each holder of Series A Preferred Stock, which written notice shall include the proposed per share issue or sale price, the date of such proposed issuance and the number of shares which such holder may purchase (which number shall be the product of (i) the number of shares proposed to be offered, times (ii) a fraction, the numerator of which is the number of shares of Common Stock into which the Series A Preferred Stock held by such holder may at that time be converted and the denominator of which is the Common Stock Outstanding immediately prior to such issuance or sale minus any additional shares of Common Stock issuable or previously issued to such holder by virtue of Section 5.3.1 hereof) (such number is hereinafter referred to as the "Pro Rata Share"). Each such holder electing to acquire his Pro Rata Share (either directly or through an affiliate of such holder) shall notify the Corporation of such election by written notice delivered to the Corporation at least 10 days prior to the proposed issuance. The Series A Preferred Stock held by all holders not acquiring in full their respective Pro Rata Shares shall automatically be converted into shares of Common Stock prior to the close of business on the day immediately preceding the closing of the Dilutive Issuance, at the respective Conversion Prices in effect on that date. The record date for holders of Series A Preferred Stock entitled to vote on any action to be taken in connection with the Dilutive Issuance shall be at the close of business on the business day immediately preceding the closing of the Dilutive Issuance. On and after said Conversion Date, notwithstanding that any certificates for the shares of Series A Preferred Stock held by holders not acquiring in full their Pro Rata Shares shall not

have been surrendered for conversion, the shares of Series A Preferred Stock evidenced thereby shall be deemed to be no longer outstanding, and all rights with respect thereto shall forthwith cease and terminate, except only the rights of the holder (i) to receive the shares of Common Stock to which he shall be entitled upon conversion thereof, (ii) to receive the amount of cash payable in respect of any fractional share of Common Stock to which he shall be entitled, and (iii) with respect to dividends declared but unpaid on the Series A Preferred Stock prior to such Conversion Date. In the event that any holder of Series A Preferred Stock presents such holder's certificate therefor for surrender to the Company or its transfer agent upon such conversion, a certificate for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were convertible on such conversion date promptly will be issued and delivered to such holder.

5.5 Merger; Sale of Corporation. In the event, after the Series A Issuance Date, of any proposed consolidation of the Corporation with, or merger of the Corporation with or into, another corporation (other than a consolidation or merger in which the Corporation is the continuing corporation and which does not result in any reclassification of, or change in, the outstanding shares of Common Stock), or in case of any proposed sale or transfer to another corporation of all or substantially all of the assets of the Corporation, any holder of Series A Preferred Stock or Series C Preferred Stock may, by delivery of an election pursuant to Section 2 above, elect to have each share of Series A Preferred Stock or Series C Preferred Stock held by such holder treated for all purposes as if it had been converted into Common Stock on the later of (i) the record date, if any, for voting by holders of Common Stock on such event and (ii) the date of such event.

Section 6. Covenants. In addition to any other rights provided by law, as long as any shares of Designated Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of the outstanding shares of the Designated Preferred Stock voting together as a class except where a vote by series is required by law (except that each series shall vote separately on matters set forth in paragraph (a) below):

(a) amend or repeal any provisions of, or add any provision to, the Corporation's articles of incorporation or by-laws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series A Preferred Stock or Series C Preferred Stock, or increase or decrease the number of shares of Series A

Preferred Stock or Series C Preferred Stock authorized hereby;

(b) authorize or issue shares of any class or series of stock not authorized herein having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Series A Preferred Stock or Series C Preferred Stock, or authorize or issue shares of stock of any class or series of any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of this Corporation having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Series A Preferred Stock or Series C Preferred Stock;

(c) reclassify any class or series of Common Stock into shares having preferences or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Series A Preferred Stock or Series C Preferred Stock.

(d) apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries (as defined in Section 425 of the Internal Revenue Code of 1986, as amended) (the "Code") or otherwise, of any shares of any class or series of Common Stock, except from employees, advisors, officers, directors and consultants of, and persons performing services for, this Corporation or its subsidiaries on terms approved by the Board of Directors upon termination of employment or association;

(e) do any act or thing which would result in taxation of the holders of shares of the Series A Preferred Stock or Series C Preferred Stock under Section 305 of the Code (or any comparable provision of the Code as hereafter from time to time amended); or

(f) (i) sell, convey or otherwise transfer all or substantially all of its property or business, or (ii) merge or consolidate with or into any other corporation (other than a wholly owned subsidiary corporation), or (iii) effect any other transaction or series of related transactions in which more than 50% of the voting power of the Corporation is transferred.

Section 7. Residual Rights. All rights accruing to the outstanding shares of this Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

Section 8. No Reissuance of Series A Preferred Stock or Series C Preferred Stock. No shares of Series A Preferred Stock or Series C Preferred Stock acquired by this Corporation by reason of purchase, conversion or otherwise, shall be reissued (either as Series A Preferred Stock or Series C Preferred Stock or any other series of Preferred Stock), and all such shares shall be restored to the status of authorized but unissued Preferred Stock without designation of rights, preferences, privileges and restrictions.

V.

For the management of the business and for the conduct of the affairs of the corporation, and in further definition, limitation and regulation of the powers of the corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted from time to time by the Board of Directors.

Following the closing of the initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "1933 Act"), covering the offer and sale of Common Stock to the public (the "Initial Public Offering"), the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. At the first annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

Notwithstanding the foregoing provisions of this Article, each director shall serve until his successor is duly elected and

qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes shall be filled by either (i) the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of voting stock of the corporation entitled to vote generally in the election of directors (the "Voting Stock") voting together as a single class; or (ii) by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such newly created directorship shall be filled by the stockholders, be filled only by the affirmative vote of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified.

B. The Bylaws may be altered or amended or new Bylaws adopted by the affirmative vote 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 Voting Stock. In furtherance and not in limitation of the power conferred by statute, the Board of Directors is expressly authorized to adopt, amend, supplement or repeal the Bylaws.

C. The directors of the corporation need not be elected by written ballot unless the Bylaws so provide.

D. Following the closing of the Initial Public Offering, no action shall be taken by the stockholders of the corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws and no action shall be taken by the stockholders by written consent.

E. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the corporation shall be given in the manner provided in the Bylaws of the corporation.

F. Any director, or the entire Board of Directors, may be removed from office at any time (i) with cause by the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the Voting Stock, voting together as a single class; or (ii) without cause

by 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 Voting Stock.

VI.

Notwithstanding any other provisions 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 affirmative vote of the holders of any particular class or series of the Voting Stock required by law, this Certificate of Incorporation or any Preferred Stock Designation, 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 Voting Stock, voting together as a single class, shall be required to alter, amend or repeal Article V or Article VIII.

VII.

The corporation is to have perpetual existence.

VIII.

The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in Article VI of this Certificate, and all rights conferred upon the stockholders herein are granted subject to this right.

IX.

The name and the mailing address of the Sole Incorporator is as follows:

<u>NAME</u>	<u>MAILING ADDRESS</u>
Julia L. Davidson, Esq.	Cooley Godward Castro Huddleson & Tatum 5 Palo Alto Square, 4th Floor Palo Alto, CA 94306

20396062
040692

19.