

07-02-2002

Attorney Docket No. 17138-1; -4; -5

FORM PTO-1594
1-31-92



VER SHEET
JLY

U.S. DEPARTMENT OF COMMERCE
Patents and Trademark Office

To the Honorable Commissioner of

102141158

ached original documents or copy thereof.
and address of receiving party(ies)

1. Name of conveying party(ies):

CORD BLOOD REGISTRY, INC.

Name: **CBR SYSTEMS, INC.**

- Individual(s)
- General Partnership
- Corporation-State: California
- Other

Internal Address:
Street Address: 1200 Bayhill Drive, Suite 301
City: San Bruno State: CA ZIP: 94066-3006

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other:
- Merger
- Change of Name

- Individual(s) citizenship
 - Association
 - General Partnership
 - Limited Partnership
 - Corporation-State: California
 - Other
- If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

Execution Date: October 18, 1999

(Designation must be a separate document from Assignment)
Additional names and addresses attached? Yes No

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

B. Trademark Registration No(s):

A. Trademark Application No(s): 75/628287

2,207,827 and 2,411,502

Additional numbers attached? Yes No

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

Name: R. Gwen Peterson, Esq.
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
(415) 576-0200

6. Total number of applications and registrations involved 3

7. Total fee (37 CFR 3.41): \$120.00

- Enclosed
- Charge Fees to Deposit Account
- Charge any additional fees associated with this paper or during the pendency of this application, or credit any overpayment, 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.

07/01/2002 DBYRME 00000048 201430 75628287

01 FC:481 40.00 CH
02 FC:482 50.00 CH

R. Gwen Peterson
Name of Person Signing

June 19, 2002
Date

Total number of pages including cover sheet, attachments and document: 19

10. Change Correspondence Address to that of Part 5? Yes No

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover to:

Asst. Commissioner for Trademarks
Box: Assignments
Washington, D.C. 20231

SF 1207794 v1

TRADEMARK
REEL: 002535 FRAME: 0816

OFFICE OF FOREIGN RECORDS
JUN 25 11 05 57
FINANCE SECTION

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

CORD BLOOD REGISTRY, INC.

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

OCT 19 1999

BILL JONES, Secretary of State

The undersigned, Thomas E. Moore and Johnnie W. Domingue, hereby certify that:

1. They are the President and Secretary, respectively, of Cord Blood Registry, Inc., a California corporation (the "Corporation").
2. The Articles of Incorporation of the Corporation are amended and restated to read in full as follows:

ARTICLE I

The name of the corporation is:

Cbr Systems, Inc.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

A. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is sixty million (60,000,000) shares. Fifty million (50,000,000) shares shall be Common Stock, par value \$0.001 per share. Ten million (10,000,000) shares shall be Preferred Stock, par value \$0.001 per share.

B. The Preferred Stock shall be divided into series. The first series shall consist of one million eight hundred seventy-four thousand two hundred thirteen (1,874,213) shares and is designated "Series A Preferred Stock." The second series shall consist of one million eight hundred eighty-six thousand seven hundred ninety-two (1,886,792) shares and is designated "Series B Preferred Stock." The remaining shares of Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the "Board of Directors") is expressly authorized, within the limitations and restrictions stated in this Amended and Restated Articles of Incorporation, to provide for the issue, in one or more series, of all or any of the remaining shares of the Preferred Stock, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the

resolution or resolutions adopted by the Board of Directors providing for the issue of such shares and as may be permitted by the General Corporation Law of California. The Board of Directors is also expressly authorized (unless forbidden in the resolution or resolutions providing for such issue) to decrease (but not below the number of shares of such series then outstanding) the number of shares of any series of Preferred Stock subsequent to the issue of shares of that series. In case the number of shares of any such series shall be so decreased, 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. The powers, preferences, rights, restrictions, and other matters relating to the Series A Preferred Stock and Series B Preferred Stock are as follows:

1. Dividends.

(a) The holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive dividends at the rate of \$0.159 and \$0.159, respectively, per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, payable out of funds legally available therefor. Such dividends shall be payable only when, as, and if declared by the Board of Directors and shall be noncumulative.

(b) No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid on any Common Stock of the Corporation during any fiscal year of the Corporation until dividends in the total amount payable at the rates of \$0.159 and \$0.159, respectively, per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) on the Series A Preferred Stock and Series B Preferred Stock, shall have been paid or declared and set apart during that fiscal year.

(c) Each share of Series A and Series B Preferred Stock shall rank on a parity with each other share of Series A and Series B Preferred Stock and senior to each other share of Preferred Stock of such series designated after the date hereof, irrespective of series, with respect to dividends as to the respective rates fixed for such series, and no dividends shall be declared or paid or set apart for payment on any series of Preferred Stock designated after the date hereof unless a dividend, bearing the same proportion to the applicable dividend rate, shall first be declared or paid or set apart for payment, as the case may be, on the Series A and Series B Preferred Stock then outstanding.

(d) In the event of a conversion of the Series A Preferred Stock and Series B Preferred Stock pursuant to Section 3 hereof, any accrued and unpaid dividends shall be paid at the election of the holder in cash or Common Stock at its then fair market value, as determined by the Board of Directors.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of each series of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock or any other junior equity security by reason of their ownership thereof, an amount per share equal to the sum of (i) \$1.59 for each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such

shares, the "Original Series A Issue Price") and \$1.59 for each outstanding share of Series B Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares, the "Original Series B Issue Price"), and (ii) an amount equal to all declared but unpaid dividends on each such share. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the product of the liquidation preference of each such share and the number of such shares owned by each such holder.

(b) Thereafter, the holders of the Common Stock shall receive the remaining assets of the Corporation.

(c) For purposes of this Section 2, (i) any acquisition of the Corporation by means of merger or other form of corporate reorganization (other than a merger for purposes of a reincorporation) in which the shareholders of the Corporation do not own a majority of the outstanding Shares of the surviving corporation or (ii) a sale of all or substantially all of the assets of the Corporation shall be treated as a liquidation, dissolution or winding up of the Corporation and shall entitle the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock to receive at the closing cash, securities or other property as specified in Sections 2(a) and 2(b) hereof.

(d) Any securities to be delivered to the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock pursuant to Section 2(c) hereof shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid and asked prices over the thirty (30) day period ending three (3) days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of not less than a majority of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, voting as a separate class.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in clauses (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of a majority of the then outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting as a separate class.

(e) The provisions of this Section 2 are in addition to the protective provisions of Section 6 hereof.

3. Conversion. The holders of Series A Preferred Stock and Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right To Convert. Subject to subsection (d), each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for Series A Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Issue Price by the Series A Conversion Price then in effect at the time that the certificate is surrendered for conversion of the Series A Preferred Stock. The initial Conversion Price per share for shares of Series A Preferred Stock (the "Series A Conversion Price") shall be the Original Series A Issue Price, provided however, that the Series A Conversion Price shall be subject to adjustment as set forth in subsection (d).

Subject to subsection (d), each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for Series B Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series B Issue Price by the Series B Conversion Price then in effect at the time that the certificate is surrendered for conversion of the Series B Preferred Stock. The initial Conversion Price per share for shares of Series B Preferred Stock (the "Series B Conversion Price") shall be the Original Series B Issue Price, provided however, that the Series B Conversion Price shall be subject to adjustment as set forth in subsection (d).

(b) Automatic Conversion. Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock as is determined by dividing the Original Series A Issue Price and the Original Series B Issue Price by the Series A Conversion Price and the Series B Conversion Price, as the case may be, then in effect at such time immediately upon the earlier of (i) the date specified by vote or written consent or agreement of (x) holders of a majority of the outstanding shares of Series A Preferred Stock with respect to the conversion of the Series A Preferred Stock and (y) holders of a majority of the outstanding shares of Series B Preferred Stock with respect to the conversion of the Series B Preferred Stock, or (ii) immediately upon the closing of the sale of the Corporation's Common Stock in a underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), other than a registration relating solely to a transaction under Rule 145 under such Act or to an employee benefit plan of the Corporation, at an aggregate gross proceeds of at least \$16,000,000 (before underwriters' discounts and expenses) and a market capitalization of at least \$80,000,000 (an "IPO").

(c) Mechanics of Conversion.

(i) Before any holder of Series A Preferred Stock or Series B Preferred Stock shall be entitled voluntarily to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that he elects to

convert the same and shall state therein the number of shares to be converted and the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock or Series B Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock or Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock or Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock or Series B Preferred Stock shall not be deemed to have converted such Series A Preferred Stock or Series B Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Adjustments to Series A or Series B Conversion Price.

(i) Special Definitions. For purposes of this Section 3(d), the following definitions apply:

(A) "Options" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (defined below).

(B) "Series A Issue Date" shall mean the date on which a share of Series A Preferred Stock was first issued.

(C) "Series B Issue Date" shall mean the date on which a share of Series B Preferred Stock was first issued.

(D) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock, Series A Preferred Stock and Series B Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(E) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 3(d)(iii) hereof, deemed to be issued) by the Corporation after the Series A Issue Date or the Series B Issue Date other than shares of Common Stock issued or issuable:

(1) Upon conversion of shares of Series A Preferred Stock or Series B Preferred Stock;

(2) Common Stock issued to employees, directors and consultants (net of repurchases, cancellations and expiration of options) pursuant to stock purchase, option and related plans or agreements approved by the Board of Directors; provided, however, that with respect to consultants who are affiliated with a Director, such Director shall not vote with respect to issuances to the affiliated consultant;

(3) Common Stock issued to vendors which are approved by the Board of Directors, not to exceed an aggregate of 100,000 shares of Common Stock issued to affiliates of an executive officer or director of the Corporation;

(4) Common Stock issued to lending or leasing institutions which are approved by the Board of Directors, not to exceed an aggregate of 100,000 shares of Common Stock issued to affiliates of an executive officer or director of the Corporation;

(5) As a dividend or distribution on the Series A Preferred Stock or Series B Preferred Stock; or

(6) For which adjustment of the Series A Conversion Price or the Series B Conversion Price is made pursuant to Section 3(e) hereof and Section 3(g) hereof.

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Series A Conversion Price or the Series B Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 3(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is, with respect to the Series A Preferred Stock, less than the Series A Conversion Price or, with respect to the Series B Preferred Stock, less than the Series B Conversion Price, in each case in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Series A Issue Date or the Series B Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustments in the Series A Conversion Price or the Series B Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price and the Series B Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series A Conversion Price or the Series B Conversion Price shall affect Common Stock previously issued upon conversion of the Preferred Stock);

(C) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series A Conversion Price and the Series B Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(1) In the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(2) In the case of Options for Convertible Securities only the Additional Shares of Common Stock, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation (determined pursuant to Section 3(d) hereof) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) No readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Series A Conversion Price or the Series B Conversion Price to an amount which exceeds the lower of (1) the Series A Conversion Price or the Series B Conversion Price on the original adjustment date, or (2) the Series A Conversion Price or the Series B Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(E) In the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Series A Conversion Price or the Series B Conversion Price shall be made until the expiration or exercise of all such

Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above.

(F) If any such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Series A Conversion Price or Series B Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and shall instead be made on the actual date of issuance, if any.

(iv) Adjustment of the Series A or Series B Conversion Prices Upon Issuance of Additional Shares of Common Stock. In the event the Corporation, at any time after the Series A Issue Date or the Series B Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(iii) hereof) without consideration or for a consideration per share less than the Series A Conversion Price or the Series B Conversion Price in effect on the date of and immediately prior to such issue, then the Series A Conversion Price or the Series B Conversion Price, as applicable, shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Series A Conversion Price or Series B Conversion Price, as applicable, by a fraction, the numerator of which shall be the number of shares of Common Stock issuable immediately prior to such issue upon conversion of all then outstanding shares of Preferred Stock plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series A Conversion Price or Series B Conversion Price, as applicable, in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock issuable immediately prior to such issue upon conversion of all then outstanding Preferred Stock plus the number of such Additional Shares of Common Stock so issued. For purposes of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated, as if all shares of Series A Preferred Stock or Series B Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date, but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Series A Preferred Stock or Series B Preferred Stock, Convertible Securities, or outstanding options, warrants or other rights for the purchase of shares of stock or convertible securities, solely as a result of the adjustment of the Series A Conversion Price or Series B Conversion Price (or other conversion ratios) resulting from the issuance of the Additional Shares of Common Stock causing the adjustment in question.

(v) Determination of Consideration. For purposes of this Section 3(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property. Such consideration shall:

(1) Insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable by the Corporation for accrued interest or accrued dividends;

(2) Insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(3) In the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(d)(iii) hereof, relating to Options and Convertible Securities shall be determined by dividing:

(1) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(2) The maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(e) Adjustments to Series A and Series B Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the Corporation at any time or from time to time after the Series A Issue Date or the Series B Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Series A Conversion Price and the Series B Conversion Price, as applicable, in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall

be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(f) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series A Preferred Stock and Series B Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 3(e) hereof or a merger or other reorganization referred to in Section 2(c) hereof), the Series A Conversion Price and the Series B Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock and Series B Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock and Series B Preferred Stock immediately before that change.

(g) Adjustment of the Series B Conversion Price Upon Failure to Achieve Certain Earnings.

(i) Subject to Section 3(g)(iii) hereof, in the event the Corporation does not achieve earnings before interest and taxes ("EBIT") of at least \$3,000,000 in the fiscal year ended December 31, 1999, as evidenced by its audited financial statements, the Series B Conversion Price shall be reduced (to the nearest cent), effective as of January 1, 2000, as determined according to the following formula:

The new Series B Conversion Price = B/C

A (expressed as a percentage) = $((\$3,000,000 - \text{EBIT}) / \$30,000) \times (.0025)$.

B (expressed as a dollar amount, not less than \$20,000,000) = $(\$3,000,000 / (A + 10\%)) - \$3,000,000$.

$C = 16,942,291$.

(ii) Subject to Section 3(g)(iii) hereof, in the event the Corporation does not achieve EBIT of at least \$10,000,000 in the fiscal year ended December 31, 2000, as evidenced by its audited financial statements, the Series B Conversion Price in effect as of December 31, 2000 shall be reduced (to the nearest cent), effective as of January 1, 2001, as determined according to the following formula:

The new Series B Conversion Price = B/C

A (expressed as a percentage) = $((\$10,000,000 - \text{EBIT}) / \$100,000) \times (.0025)$.

B (expressed as a dollar amount, not less than \$20,000,000) =
(($\$3,000,000 / (A + 10\% + A$ as computed for any EBIT shortfall for fiscal year ended
December 31, 1999)) - $\$3,000,000$.

$C = 16,942,291$.

(iii) Notwithstanding anything to the contrary in (i) and (ii) above,
there will be no further adjustment to the Series B Conversion Price:

(A) if the maximum adjustment to the Series B Conversion Price is made
effective as of January 1, 2000 based on EBIT achieved for the fiscal year ended
December 31, 1999, there will be no calculation or determination necessary based on the
EBIT achieved for the fiscal year ended December 31, 2000; or

(B) if the EBIT achieved for fiscal year ended December 31, 1999 is
 $\$3,000,000$ or greater, there will be no adjustment to the Series B Conversion Price
effective as of January 1, 2000; provided, however, that the EBIT achieved for fiscal year
ended December 31, 1999 above $\$3,000,000$ will not be taken into consideration with
regard to the independent determination of the Series B Conversion Price adjustment, if
any, relative to the $\$10,000,000$ EBIT requirement for the fiscal year ended
December 31, 2000 and provided further, that any adjustment to the Series B Conversion
Price effective January 1, 2000, based on EBIT achieved for fiscal year ended
December 31, 1999, will be taken into account in determining the maximum adjustment,
if any, effective as of January 1, 2001.

(iv) In the event the Corporation commences its initial public offering
prior to December 31, 2000 by filing a registration statement with the Securities
and Exchange Commission to register shares of Common Stock and the EBIT
year-to-date is less than the projected EBIT year-to-date in the calendar year in
which such registration statement is filed, the Series B Conversion Price in effect
at the time of the filing of such registration statement shall be reduced (to the
nearest cent), effective as of a date which is the last day of the calendar month
immediately preceding the month of the filing of such registration statement, as
determined according to the following formula:

The new Series B Conversion Price = B/C

A (expressed as a percentage) = $((EBIT - EBIT \text{ projected}) / \$100,000) \times (.0025)$.

B (expressed as a dollar amount, not less than \$20,000,000) =
(($\$3,000,000 / (A + 10\% + A$ as computed for any EBIT shortfall for fiscal year ended
December 31, 1999)) - $\$3,000,000$.

$C = 16,942,291$.

Notwithstanding anything to contrary in this subsection (iv), in the event the initial public offering contemplated by such registration statement does not close, the foregoing adjustment to the Series B Conversion Price shall be null and void.

(h) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any 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, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 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 the Series A and Series B Preferred Stock against impairment.

(i) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Series A Conversion Price and Series B Conversion Price pursuant to this Section 3, 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 Series A and Series B Preferred Stock, as applicable, a certificate executed by the Corporation's President or Chief Financial Officer 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 B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series A Conversion Price at the time in effect, (iii) the Series B Conversion Price at the time in effect, and (iv) 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 the Series A Preferred Stock or the Series B Preferred Stock. No adjustment in the Conversion Price need be made if such adjustment would result in a change in the Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in the Conversion Price.

(j) Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other Corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Series A Preferred Stock and Series B Preferred Stock:

(A) At least twenty (20) days prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and

(B) In the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(k) Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock and Series B Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(l) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock and Series B Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock and Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock and Series B Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Amended and Restated Articles of Incorporation.

(m) Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Series A Preferred Stock or Series B Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock or Series B Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

(n) Notices. Any notice required by the provisions of this Section 3 to be given to the holders of shares of Series A Preferred Stock and Series B Preferred Stock shall be deemed effectively given (a) upon personal delivery to the party to be notified by hand or professional courier service, (b) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day or (c) or five (5) days after deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address appearing on the books of the Corporation, or at such other address as such party may designate by ten (10) days advance written notice to the other parties.

4. Voting Rights.

(a) Each holder of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock (except with respect to the election of directors or as otherwise provided herein or as required by law), voting together with the Common Stock as a single class, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of the Corporation. With respect to such vote, the holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Preferred Stock could be converted on the record date for the vote or written consent of shareholders. In all cases any fractional share, determined on an aggregate conversion basis, shall be rounded to the nearest whole share. Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

(b) Designation of Directors.

(i) The holders of the Series B Preferred Stock shall be entitled, as a group voting as a separate class (the "Preferred Class"), to elect (and to remove, either for or without cause) one (1) member of the Board of Directors of the Corporation. The remaining directors (the "Combined Class") shall be elected (and removed, either for or without cause) by the holders of Series A Preferred Stock and Common Stock, voting together as a separate class.

(ii) In the case of any vacancy in the office of a director occurring among the directors elected by the Preferred Class or Combined Class pursuant to subparagraph (i) of paragraph (b) of Section 4 hereof, the holders of a majority of the shares of that class may elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant, as set forth above. Any director who shall have been elected by the Preferred Class or Combined Class may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of the outstanding shares of the Preferred Class or Combined Class, as the case may be, provided that the number of votes against removal is less than the number of votes necessary to elect that director.

5. Redemption.

(a) Voluntary Redemption of Series B Preferred Stock. Subject to the terms and conditions of this subsection, to the extent that any outstanding shares of Series B Preferred Stock have not been converted into Common Stock if (i) Thomas E. Moore terminates his employment with the Corporation for any reason, or (ii) the Corporation has not closed an IPO on a date that is prior to forty-eight (48) months after the date of the first sale of Series B Preferred Stock (subsections (i) and (ii) collectively, a "Redemption Event"), the holders of Series B Preferred Stock shall have the right to cause the Corporation to redeem, at the option of the holder thereof, at any time after the occurrence of a Redemption Event, from any source of funds legally available therefor, the then outstanding shares of Series B Preferred Stock at the redemption price described in this Section 5. The redemption price for each share of Series B Preferred Stock redeemed pursuant to subsection (i) of this Section 5(a) shall be an amount equal to the Series B Original Issue Price (as adjusted for any stock dividends, combinations or splits

with respect to such shares) together with all accrued but unpaid dividends. The redemption price for each share of Series B Preferred Stock redeemed pursuant to subsection (ii) of this Section 5(a) shall be an amount equal to the Series B Original Issue Price (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus six percent (6%) interest compounded annually. Shares of Series B Preferred Stock which are subject to redemption hereunder but which have not been redeemed due to insufficient legally available funds and assets of the Corporation shall continue to be outstanding and entitled to all dividend, liquidation, conversion and other rights, preferences, privileges and restrictions of the Series B Preferred Stock until such shares have been converted or redeemed.

(b) Partial Redemption. If the Corporation is unable to redeem all shares of the Series B Preferred Stock pursuant to this Section 5, the Corporation shall effect such redemption pro rata among the holders of then outstanding Series B Preferred Stock requesting such redemption, according to the number of shares held by each holder thereof as of the Redemption Event.

(c) Surrender of Certificates. On or after the Redemption Event, each holder of Series B Preferred Stock exercising its redemption rights hereunder (unless such holder has previously exercised his right to convert such shares of Series B Preferred Stock into Common Stock as provided in Section 3 hereof), shall surrender the certificate(s) representing such shares of Series B Preferred Stock to be redeemed to the Corporation, in the manner and at the place designated by the Corporation, and thereupon the redemption price for such shares shall be payable to the order of the person whose name appears on such certificate(s) as the owner thereof, and each surrendered certificate shall be canceled and retired. If less than all of the shares represented by such certificate are redeemed, then the Corporation shall promptly issue a new certificate representing the unredeemed shares.

(d) Effect of Redemption. If, upon request by a holder of Series B Preferred Stock, the redemption price is paid, then notwithstanding that the certificates evidencing any of the shares of Series B Preferred Stock to be redeemed shall not have been surrendered, all dividends with respect to such shares shall cease to accrue after the date payment of the redemption price is made to such holder. Such shares shall not thereafter be transferred on the Corporation's books and the rights of all of the holders of such shares with respect to such shares shall terminate after the date such payment is made, except only the right of the holders to receive the redemption price without interest after the date the redemption price is paid upon surrender of their certificate(s) therefor.

6. Restrictions and Limitations.

(a) So long as at least twenty-five percent (25%) of the shares of Series B Preferred Stock originally issued remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of the Series B Preferred Stock, voting as a separate class:

(i) Redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock otherwise than by conversion in accordance with Section 3 hereof; provided,

however, that this restriction shall not apply to the redemption of shares of Series B Preferred Stock pursuant to these Articles;

(ii) Redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any of the Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost or at cost plus interest upon the occurrence of certain events, such as the termination of employment;

(iii) Authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) pari passu or senior to the Series B Preferred Stock as to voting, conversion, dividend rights (including rate, cumulative and timing of payments), redemption rights or liquidation preferences;

(iv) Effect (A) any sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Corporation, or (B) any consolidation or merger involving the Corporation, or any reclassification or other change of any stock, or any recapitalization of the Corporation, in which the shareholders of the Corporation own less than fifty-one percent (51%) of the outstanding shares of the surviving entity;

(v) Declare or pay any dividend on the Common Stock or Preferred Stock; or

(vi) Increase the authorized number of directors of the Corporation above six (6).

(b) So long as any shares of Preferred Stock originally issued remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of such series of Preferred Stock, voting as a separate class:

(i) Amend the Articles of Incorporation to alter or change the rights, preferences or privileges of such series of Preferred Stock so as to affect adversely the shares of such series or alter or change the provisions of this Section 6.

7. **Status of Converted Stock.** In the event any shares of Series A Preferred Stock and Series B Preferred Stock shall be converted pursuant to Section 3 hereof, or shall be acquired by the Corporation, the shares so converted or acquired shall be canceled and shall not be issuable by the Corporation, and the Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

ARTICLE II

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

B. The Corporation is authorized to provide indemnification of agents (as defined in section 317 of the California Corporations Code) for breach of duty to the corporation and its shareholders through bylaw provisions or through agreements with the agents, or through shareholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in section 204 of the California Corporations Code.


C. Any amendment, repeal or modification of any provision of this Article IV shall not adversely affect any right or protection of an agent of the Corporation existing at the time of such amendment, repeal or modification.

3. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the Board of Directors.

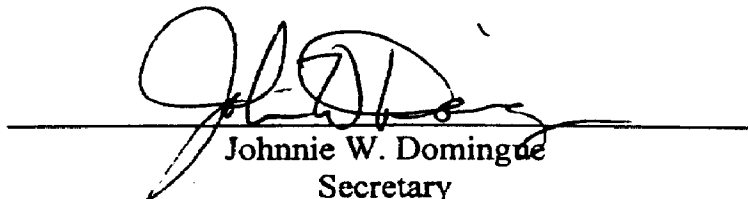
4. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with sections 902 and 903 of the California Corporations Code. The number of outstanding shares of Common Stock, Series A Preferred Stock and Series B Preferred Stock of the Corporation are 14,520,915, 0 and 0, respectively. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%) of the shares of Common Stock.

I further 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 my own knowledge.

Dated: October 18, 1999.



Thomas E. Moore
President



Johnnie W. Domingue
Secretary

