

10-09-2002



Form PTO-151  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)

102244980

OFFICE OF PUBLIC RECORDS

FORM COVER SHEET  
MARKS ONLY

U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):

**Silicon Image, Inc.**  
**1060 East Arques Avenue**  
**Sunnyvale, California 94086**

FINANCE SECTION

10/3/02

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

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

3. Nature of conveyance:

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

Execution Date: **September 9, 1999**

2. Name and address of receiving party(ies)

Name: **Silicon Image, Inc.**  
Street Address: **1060 East Arques Avenue**  
City: Sunnyvale State: CA Zip: **94086**

- 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  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

OFFICE OF PUBLIC RECORDS  
2002 OCT -3 AM 9:11  
FINANCE SECTION

4. A. Trademark Application No.(s)  
**75/286,162**

B. Trademark Registration No.(s)  
**2,188,453 2188454 2250086**  
**2,362,879 2189641**

Additional number(s) attached  Yes  No

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

Name: **Linda G. Henry, Esq.**  
**Fenwick & West LLP**  
**Two Palo Square**  
**Palo Alto, California 94306**

6. Total number of applications and registrations involved: **six (6)**

7. Total fee (37 CFR 3.41) **\$165.00**

- Enclosed *and*
- Authorized to be charged to deposit account, if *necessary*

8. Deposit account number:

(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 information is true and correct and any attached copy is a true copy of the original document.

**Linda G. Henry, Esq.**

*Linda G. Henry*  
Signature

**October 2, 2002**

Date

Express Mail mailing label No. **FL 935 813 910 45**

Date of Deposit **10/3/02**

I hereby certify that this paper of fee is being deposited with the **Total number of pages including cover sheet, attachments, and document 27**

United States Postal Service "Express Mail Post Office" service under 37 CFR 1.10 on the date indicated above and is addressed to: Assistant Commissioner for Trademark, 2900 Crystal Dr., Arlington, VA 22202-3513  
Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

*Larisa Burchstein*  
(Type or Print Name of Person Mailing Paper or Fee)  
*Larisa Burchstein*  
(Signature of Person Mailing Paper or Fee)

19570/00070/DOCS/1301365.1

TRADEMARK  
REEL: 002595 FRAME: 0144

# Office of the Secretary of State


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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:  
"SILICON IMAGE, INC.", A CALIFORNIA CORPORATION,  
WITH AND INTO "SILICON IMAGE, INC. (DELAWARE)" UNDER THE NAME OF "SILICON IMAGE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINTH DAY OF SEPTEMBER, A.D. 1999, AT 9 O'CLOCK A.M.

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



3055333 8100M

  
\_\_\_\_\_  
Edward J. Freel, Secretary of State

AUTHENTICATION

9966392

TRADEMARK  
REEL: 002595 FRAME: 0145

## AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "*Merger Agreement*") is entered into as of August 10, 1999, by and between Silicon Image, Inc., a California corporation ("*Sil California*"), and Silicon Image, Inc. (Delaware), a Delaware corporation ("*Sil Delaware*"). Sil California and Sil Delaware are hereinafter sometimes collectively referred to as the "*Constituent Corporations*".

### RECITALS

A. Sil California was incorporated on January 1, 1995. Its current authorized capital stock consists of: (i) 21,500,000 shares of Common Stock, no par value ("*Sil California Common Stock*"), of which 9,566,212 shares are issued and outstanding; and (ii) 10,065,000 shares of Preferred Stock, no par value ("*Sil California Preferred Stock*"), of which 9,559,859 shares are issued and outstanding (consisting of 1,565,000 shares of Series A Preferred Stock, 400,000 shares of Series B Preferred Stock, 4,000,000 shares of Series C Preferred Stock and 3,594,859 shares of Series D Preferred Stock).

B. Sil Delaware was incorporated on June 11, 1999. Its authorized capital stock consists of 1,000 shares of Common Stock, with a par value of \$0.001 per share ("*Sil Delaware Common Stock*"), of which 1,000 shares are issued and outstanding.

C. The respective Boards of Directors of Sil California and Sil Delaware deem it advisable and to the advantage of each of the Constituent Corporations that Sil California merge with and into Sil Delaware upon the terms and subject to the conditions set forth in this Merger Agreement for the purpose of effecting a change of the state of incorporation of Sil California from California to Delaware.

D. The Boards of Directors of each of the Constituent Corporations have approved this Merger Agreement.

**NOW, THEREFORE**, the parties do hereby adopt the plan of reorganization set forth in this Merger Agreement and do hereby agree that Sil California shall merge with and into Sil Delaware on the following terms, conditions and other provisions:

1. **Merger and Effective Time.** At the Effective Time (as defined below), Sil California shall be merged with and into Sil Delaware (the "*Merger*"), and Sil Delaware shall be the surviving corporation of the Merger (the "*Surviving Corporation*"). The Merger shall become effective upon the close of business on the date when a duly executed copy of this Merger Agreement, along with all required officers' certificates, is filed with the Secretary of State of the State of Delaware (the "*Effective Time*").

2. **Effect of Merger.** At the Effective Time, the separate corporate existence of Sil California shall cease; the corporate identity, existence, powers, rights and immunities of Sil Delaware as the Surviving Corporation shall continue unimpaired by the Merger; and Sil Delaware shall succeed to and shall possess all the assets, properties, rights, privileges, powers,

franchises, immunities and purposes, and be subject to all the debts, liabilities, obligations, restrictions and duties of SiI California, all without further act or deed.

3. **Name Change; Governing Documents.** At the Effective Time, (i) the name of SiI Delaware shall be Silicon Image, Inc., (ii) the Certificate of Incorporation of SiI Delaware in effect immediately prior to the Effective Time shall be amended and restated by virtue of the Merger to read as set forth in full in Exhibit "A" hereto (the "*First Restated Certificate*"), and (iii) the Bylaws of SiI Delaware in effect immediately prior to the Effective Time shall be amended and restated by virtue of the Merger as approved by the Board of Directors of SiI Delaware.

4. **Directors and Officers.** At the Effective Time, the directors of SiI Delaware shall be and become the directors of the Surviving Corporation, and the officers of SiI Delaware shall be and become the officers (holding the same offices) of the Surviving Corporation, and after the Effective Time shall serve in accordance with the First Restated Certificate and Bylaws of the Surviving Corporation.

5. **Conversion of Shares of SiI California.** At the Effective Time, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, (i) each share of SiI California Common Stock issued and outstanding immediately prior thereto shall be converted into one fully paid and nonassessable share of SiI Delaware Common Stock, (ii) each share of SiI California Series A Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and nonassessable, issued and outstanding share of SiI Delaware Series A Preferred Stock, (iii) each share of SiI California Series B Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and nonassessable, issued and outstanding share of SiI Delaware Series B Preferred Stock, (iv) each share of SiI California Series C Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and nonassessable, issued and outstanding share of SiI Delaware Series C Preferred Stock and (v) each share of SiI California Series D Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and nonassessable, issued and outstanding share of SiI Delaware Series D Preferred Stock.

6. **Cancellation of Shares of SiI Delaware.** At the Effective Time, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, all of the previously issued and outstanding shares of SiI Delaware Common Stock that were issued and outstanding immediately prior to the Effective Time shall be automatically canceled and returned to the status of authorized but unissued shares.

7. **Stock Certificates.** At and after the Effective Time, all of the outstanding certificates that, prior to that date, represented shares of SiI California Common Stock shall be deemed for all purposes to evidence ownership of and to represent the number of shares of SiI Delaware Common Stock into which such shares of SiI California Common Stock are converted as provided herein. At and after the Effective Time, all of the outstanding certificates that, prior to that date, represented shares of a series of SiI California Preferred Stock shall be deemed for all purposes to evidence ownership of and to represent the number of shares of the series of shares of SiI Delaware Preferred Stock into which such shares of SiI California Preferred Stock are converted as provided herein.

are converted as provided herein. The registered owner on the books and records of S California of any such outstanding stock certificate for S California Common Stock or S California Preferred Stock shall, until such certificate is surrendered for transfer or otherwise accounted for to S Delaware or its transfer agent, be entitled to exercise any voting and other rights with respect to, and to receive any dividend and other distributions upon, the shares of S Delaware Common Stock or S Delaware Preferred Stock evidenced by such outstanding certificate as provided above.

8. Assumption of Options and Warrants. At the Effective Time, all outstanding and unexercised portions of all options to purchase S California Common Stock under the S California 1995 Equity Incentive Plan (the "*Existing Plan*"), and all other outstanding options to purchase S California Common Stock, shall be assumed by S Delaware and become options to purchase the same number of shares of S Delaware Common Stock at the same exercise price per share but otherwise shall, to the extent permitted by law and otherwise reasonably practicable, have the same term, exercisability, vesting schedule, status as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "*Code*"), applicable, and all other material terms and conditions (including but not limited to the terms and conditions applicable to such options by virtue of the Existing Plan). Continuous employment with S California will be credited to an optionee for purposes of determining the vesting of the number of shares of S Delaware Common Stock subject to exercise under an assumed S California option at the Effective Time. At the Effective Time, S Delaware shall adopt or assume the Existing Plan. Additionally, at the Effective Time, all outstanding and unexercised portions of all warrants to purchase or acquire S California Common Stock or any series of S California Preferred Stock shall be assumed by S Delaware and become warrants to purchase or acquire the same number of shares of S Delaware Common Stock or the corresponding series of S Delaware Preferred Stock, as the case may be, at the same exercise price per share but otherwise with the same term, exercisability, and all other material terms and conditions.

9. Fractional Shares. No fractional shares of S Delaware Common Stock or S Delaware Preferred Stock will be issued in connection with the Merger.

10. Employee Benefit Plans. At the Effective Time, the obligations of S California under or with respect to every plan, trust, program and benefit then in effect or administered by S California for the benefit of the directors, officers and employees of S California or any of its subsidiaries shall become the lawful obligations of S Delaware and shall be implemented and administered in the same manner and without interruption until the same are amended or otherwise lawfully altered or terminated. Effective at the Effective Time, S Delaware hereby expressly adopts and assumes all obligations of S California under such employee benefit plans.

11. Further Assurances. From time to time, as and when required by the Surviving Corporation or by its successors or assigns, there shall be executed and delivered on behalf of S California such deeds, assignments and other instruments, and there shall be taken or caused to be taken by it all such further action, as shall be appropriate, advisable or necessary in order to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation the title to an possession of all property, interests, assets, rights, privileges, immunities, powers, franchises and authority of S California, and otherwise to carry out the purposes of this Merger Agreement.

on behalf of SiI California, or otherwise, to take any and all such actions and to execute a deliver any and all such deeds and other instruments as may be necessary or appropriate accomplish the foregoing.

12. **Condition.** The consummation of the Merger is subject to the approval of the Merger Agreement and the Merger contemplated hereby by the shareholders of SiI California and by the sole stockholder of SiI Delaware, prior to or at the Effective Time.

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

14. **Amendment.** At any time before the Effective Time, this Merger Agreement may be amended, modified or supplemented by the Boards of Directors of the Constituent Corporations, notwithstanding approval of this Merger Agreement by the shareholders of SiI California and the sole stockholder of SiI Delaware; provided, however, that any amendment made subsequent to the adoption of this Merger Agreement by the shareholders of SiI California or the sole stockholder of SiI Delaware shall not: (i) alter or change the amount or kind of share securities, cash, property and/or rights to be received in exchange for or upon conversion of all shares of any class or series of SiI California; (ii) alter or change of any of the terms of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger; or (iii) alter or change any of the terms or conditions of this Merger Agreement if such alteration or change would adversely affect the holders of any shares of any class or series of SiI California or SiI Delaware.

15. **Tax-Free Reorganization.** The Merger is intended to be a tax-free plan reorganization within the meaning of Section 368(a)(1)(F) of the Code.

16. **Governing Law.** This Merger Agreement shall be governed by and construed under the internal laws of the State of California as applied to agreements among California residents entered into and to be performed entirely within California, without reference to the principles of conflicts of law or choice of laws, except to the extent that the laws of the State of Delaware would apply in matters relating to the internal affairs of SiI Delaware and the Merger.

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

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**SILICON IMAGE, INC. (DELAWARE)**  
(a Delaware corporation)

**OFFICERS' CERTIFICATE**

David D. Lee and Daniel K. Adler certify that:

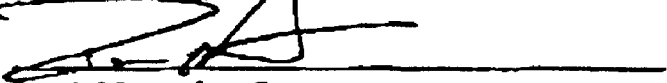
1. They are the President and the Secretary, respectively, of Silicon Image, Inc. (Delaware), a Delaware corporation (the "*Corporation*").
2. The Corporation has one class of stock authorized, "Common Stock".
3. There were 1,000 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger in the form attached hereto (the "*Merger Agreement*").
4. The principal terms of the Merger Agreement were duly approved by the Board of Directors and by the vote of all of the outstanding shares of Common Stock.
5. The percentage vote required to approve the Merger Agreement was the majority of the outstanding Common Stock.

We further declare under penalty of perjury under the laws of the States of California and Delaware that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: sept. 9, 1999



David D. Lee, President



Daniel K. Adler, Secretary

**SILICON IMAGE, INC.**  
(a California corporation)


**OFFICERS' CERTIFICATE**

David D. Lee and Susan Dunn certify that:

1. They are the President and the Secretary, respectively, of Silicon Image, Inc., a California corporation (the "*Corporation*").
2. The Corporation has two classes of stock authorized, "Common Stock" and "Preferred Stock".
3. There were 9,566,212 shares of Common Stock and 9,559,859 shares of Preferred Stock (consisting of 1,565,000 shares of Series A Preferred Stock, 400,000 shares of Series B Preferred Stock, 4,000,000 shares of Series C Preferred Stock and 3,594,859 shares of Series D Preferred Stock) outstanding and entitled to vote on the Agreement and Plan of Merger in the form attached hereto (the "*Merger Agreement*").
4. The principal terms of the Merger Agreement were duly approved by the Board of Directors and by the vote of a number of shares of each class of stock which equaled or exceeded the vote required.
5. The percentage vote required to approve the Merger Agreement was the affirmative vote of at least a majority of the outstanding shares of Common Stock, voting as a separate class, and the affirmative vote of at least a majority of the outstanding shares of Preferred Stock, voting as a separate class on an as converted to Common Stock basis.

We further declare under penalty of perjury under the laws of the States of California and Delaware that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: Sept. 9, 1999

  
\_\_\_\_\_  
David D. Lee, President

  
\_\_\_\_\_  
Susan Dunn, Secretary



**FIRST AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF**

**SILICON IMAGE, INC. (DELAWARE)**

(Originally incorporated on June 11, 1999 under the name Silicon Image, Inc. (Delaware))

Silicon Image, Inc. (Delaware), a Delaware corporation, hereby certifies that the First Amended and Restated Certificate of Incorporation of the corporation attached hereto as Exhibit "A", which is incorporated herein by this reference, has been duly adopted by the corporation's Board of Directors and stockholders in accordance with Sections 242 and 245 of the Delaware General Corporation Law, with the approval of the corporation's stockholders having been given by written consent without a meeting in accordance with Section 228 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, said corporation has caused this First Amended and Restated Certificate of Incorporation to be signed by its by duly authorized officer.

Dated: Sept. 9, 1999

Silicon Image, Inc. (Delaware)

  
\_\_\_\_\_  
David D. Lee, President

**FIRST AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF**

**SILICON IMAGE, INC.**

**ARTICLE I**

The name of the corporation is Silicon Image, Inc.

**ARTICLE II**

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

**ARTICLE III**

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

**ARTICLE IV**

The total number of shares of all classes of stock which the corporation has authority to issue is 85,065,000 shares, consisting of two classes: 75,000,000 shares of Common Stock \$0.001 par value per share, and 10,065,000 shares of Preferred Stock, \$0.001 par value per share. Of the 10,065,000 shares of Preferred Stock, par value \$0.001, authorized to be issued by the corporation, 1,565,000 shares are hereby designated "Series A Preferred Stock," 400,000 shares are hereby designated "Series B Preferred Stock," 4,100,000 shares are hereby designated "Series C Preferred Stock" and 4,000,000 shares are hereby designated "Series D Preferred Stock." The rights, preferences, privileges and restrictions granted to and imposed upon the respective classes and series of the corporation's capital stock are set forth below:

1. Definitions. For purposes of this Article IV, the following definitions shall apply:

1.1 "Board" shall mean the Board of Directors of the Company.

1.2 "Company" shall mean this corporation.

1.3 "Common Stock" shall mean the Common Stock, no par value, of the Company.

1.4 "Common Stock Dividend" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.

1.5 "Dividend Rate" shall mean \$0.05 per share per annum for the Series A Preferred Stock, \$0.275 per share per annum for the Series B Preferred Stock, \$0.0625 per share per annum for the Series C Preferred Stock and \$0.175 per share per annum for the Series D Preferred Stock.

1.6 "Original Issue Date" shall mean, for the Series A Preferred Stock, the date on which the first share of Series A Preferred Stock is issued by the Company, for the Series B Preferred Stock, the date on which the first share of Series B Preferred Stock is issued by the Company, for the Series C Preferred Stock, the date on which the first share of Series C Preferred Stock is issued by the Company and for the Series D Preferred Stock the date on which the first share of Series D Preferred Stock is issued by the Company.

1.7 "Original Issue Price" shall mean \$1.00 per share for the Series A Preferred Stock, \$5.50 per share for the Series B Preferred Stock, \$1.25 per share for the Series C Preferred Stock and \$3.50 per share for the Series D Preferred Stock.

1.8 "Permitted Repurchases" shall mean the repurchase by the Company of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Company or a subsidiary that are subject to the Company's standard form restricted stock purchase agreement or the Company's standard form stock option exercise agreement under which the Company has the option to repurchase such shares: (i) at cost, upon the occurrence of certain events, such as the termination of employment or services; or (ii) at any price pursuant to the Company's exercise of a right of first refusal to repurchase such shares.

1.9 "Preferred Stock" shall mean the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock, collectively.

1.10 "Series A Preferred Stock" shall mean the Series A Preferred Stock, \$0.001 par value per share, of the Company.

1.11 "Series B Preferred Stock" shall mean the Series B Preferred Stock, \$0.001 par value per share, of the Company.

1.12 "Series C Preferred Stock" shall mean the Series C Preferred Stock, \$0.001 par value per share, of the Company.

1.13 "Series D Preferred Stock" shall mean the Series D Preferred Stock, \$0.001 par value per share, of the Company.

1.14 "Subsidiary" shall mean any corporation of which at least fifty percent (50%) of the outstanding voting stock is at the time owned directly or indirectly by the Company or by one or more of such subsidiary corporations.

## 2. Dividend Rights.

2.1 Dividend Preference. In each calendar year, the holders of the then outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Company legally available therefor, noncumulative dividends at the annual Dividend Rate for each such series of Preferred Stock, prior and in preference to the payment of any dividends on the Common Stock in such calendar year (other than a Common Stock Dividend). No dividends (other than a Common Stock Dividend) shall be paid with respect to the Common Stock during any calendar year unless dividends in the total amount of the annual Dividend Rate for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall have first been paid or declared and set apart for payment to the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and Series D Preferred Stock, respectively, during that calendar year; provided, however, that this restriction shall not apply to Permitted Repurchases. Payments of any dividends to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be paid pro rata, on an equal priority, pari passu basis according to their respective dividend preferences as set forth herein. Dividends on the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and Series D Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock or Series D Preferred Stock by reason of the fact that the Company shall fail to declare dividends on the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock or Series D Preferred Stock in the amount of the annual Dividend Rate for each such series or in any other amount in any calendar year or any fiscal year of the Company, whether or not the earnings of the Company in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part.

2.2 Participation Rights. If, after dividends in the full preferential amounts specified in this Section 2 for the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock have been paid or declared and set apart in any calendar year of the Company, the Board shall declare additional dividends out of funds legally available therefor in that calendar year, then such additional dividends shall be declared pro rata on the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock on a pari passu basis according to the number of shares of Common Stock held by such holders, where each holder of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock is to be treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock, as the case may be, held by such holder pursuant to Section 5.

2.3 Non-Cash Dividends. Whenever a dividend provided for in this Section 2 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board.

2.4 No Payment on Conversion. If the Company shall have declared but unpaid dividends with respect to any Preferred Stock upon its conversion as provided in Section 5, then all such declared but unpaid dividends on such converted shares shall be canceled.

3. Liquidation Rights. In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the funds and assets of the Company that may be legally distributed to the Company's stockholders (the "Available Funds and Assets") shall be distributed to stockholders in the following manner:

3.1 Liquidation Preferences. The holders of each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an amount per share equal to the Original Issue Price for each such series of Preferred Stock, respectively, plus all declared but unpaid dividends thereon. If upon any liquidation, dissolution or winding up of the Company, the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and Series D Preferred Stock of their full preferential amounts described in this subsection, then all the remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock pro rata, on an equal priority, pari passu basis, according to their respective liquidation preferences as set forth herein.

3.2 Remaining Assets. If there are any Available Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) to the holders of the Preferred Stock of their full preferential amounts described above in this Section 3, then all such remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Common Stock and the Series D Preferred Stock pro rata according to the number of shares of Common Stock held by such holders where, for this purpose, holders of shares of Series D Preferred Stock will be deemed to hold (in lieu of their Series D Preferred Stock) the greatest whole number of shares of Common Stock then issuable upon conversion in full of such shares of Series D Preferred Stock pursuant to Section 5, until such time as each holder of then outstanding Series D Preferred Stock shall have received, in distributions made under this Section 3, an aggregate amount equal to \$7.875 (such aggregate dollar amount to include all amounts previously paid to such holder pursuant to subsection 3.1). After such distribution has been made to all holders of Series D Preferred Stock, then the holders of the outstanding Common Stock shall be entitled to receive all the remaining Available Funds and Assets (if any) pro rata according to the number of outstanding shares of Common Stock then held by each of them.

3.3 Merger or Sale of Assets. An (i) acquisition of the Company by means of any transaction or series of transactions resulting in the consolidation or merger of the Company with or into any other entity in which the holders of the Company's outstanding shares immediately before such consolidation or merger do not, immediately after such consolidation or merger, retain voting rights representing a majority of the voting power of the surviving entity of

such consolidation or merger; or (ii) a sale of all or substantially all of the assets of the Company, shall each be deemed to be a liquidation, dissolution or winding up of the Company within the meaning of this Section 3.

3.4 Non-Cash Consideration. If any assets of the Company distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Company are other than cash, then the value of such assets shall be their fair market value as determined by the Board, ~~except that~~ any securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Company shall be valued as follows:

(a) The method of valuation of securities not subject to investment letter or other similar restrictions on free marketability shall be as follows:

(i) if the securities are then traded on a national securities exchange or the Nasdaq National Market (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period ending three (3) days prior to the distribution; and

(ii) if actively traded over-the-counter, then the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the closing of such merger, consolidation or sale; and

(iii) if there is no active public market, then the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Company.

(b) 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 subparagraphs (a)(i), (ii), or (iii) of this subsection to reflect the approximate fair market value thereof, as determined in good faith by the Board.

#### 4. Voting Rights.

4.1 Common Stock. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.

4.2 Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such shares of Preferred Stock could be converted pursuant to the provisions of Section 5 below at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of stockholders is solicited.

4.3 General. Subject to the foregoing provisions of this Section 4, 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, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to

any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided by applicable law. Except as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

4.4 Board Size. The authorized number of directors of the Company's Board shall be a minimum of four (4) and a maximum of seven (7). The Board may vary the authorized number of directors by resolution within the range of the minimum and the maximum authorized numbers of directors.

4.5 Board of Directors Election and Removal.

(a) Election. So long as at least 200,000 shares of Series A Preferred Stock and/or Series B Preferred Stock are outstanding, the holders of the Series A Preferred Stock and Series B Preferred Stock, voting together as a separate class (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code), shall be entitled to elect one (1) director of the Company (the "Series A and B Director"). So long as at least 400,000 shares of Series C Preferred Stock are outstanding, the holders of the Series C Preferred Stock, voting as a separate series (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code), shall be entitled to elect one (1) director of the Company (the "Series C Director"). So long as at least 400,000 shares of Series D Preferred Stock are outstanding, the holders of the Series D Preferred Stock voting as a separate series (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code), shall be entitled to elect one (1) director of the Company (the "Series D Director"). The holders of the Common Stock, voting as a separate class (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code), shall be entitled to elect two (2) directors of the Company (the "Common Directors"). The holders of the Preferred Stock and the Common Stock, voting together as a single class (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code) shall be entitled to elect the remaining directors of the Company (the "At-Large Directors").

(b) Quorum; Required Vote.

(i) Quorum. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of (i) the Series A Preferred Stock and Series B Preferred Stock for purposes of electing the Series A and B Director, (ii) the Series C Preferred Stock for purposes of electing the Series C Director, (iii) the Series D Preferred Stock for the purpose of electing the Series D Director, (iv) the Common Stock for purposes of electing the Common Directors, and (v) the Preferred Stock and Common Stock for purposes of electing the At-Large Directors, shall constitute a quorum for the election of the Series A and B Director, the Series C Director, the Series D Director, the Common Directors and the At-Large Directors, respectively.

(ii) Required Vote. With respect to the election of the Series A and B Director, the Series C Director, the Series D Director, the Common Directors and the At-Large Directors, that candidate or those candidates (as applicable) shall be elected who either: (i) in the case of any such vote of the holders of the applicable class or series of stock, as described

in paragraph 4.5(a) above (the "Specified Stock") conducted at a meeting of the stockholders, receive the highest number of affirmative votes of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (ii) in the case of any such vote taken by written consent without a meeting, are elected by the unanimous written consent of the holders of shares of such Specified Stock.

(c) Vacancy. If there shall be any vacancy in the office of a director elected by the holders of any Specified Stock pursuant to subsection 4.5(a), then a successor to hold office for the unexpired term of such director may be elected by either: (i) the remaining director or directors (if any) in office that were so elected by the holders of such Specified Stock, by the affirmative vote of a majority of such directors (or by the sole remaining director elected by the holders of such Specified Stock if there be but one), or (ii) the affirmative vote of the holders of the shares of such Specified Stock that are entitled to elect such director under subsection 4.5(a).

(d) Removal. Subject to Section 303 of the Corporations Code, any director who shall have been elected to the Board by the holders of any Specified Stock pursuant to subsection 4.5(a) or by any director or directors elected by holders of any Specified Stock as provided in subsection 4.5(c), may be removed during his or her term of office, either with or without cause, by, and only by, the affirmative vote of shares representing a majority of the voting power of all the outstanding shares of such Specified Stock entitled to vote, given either at a meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders without a meeting, and any vacancy created by such removal may be filled only in the manner provided in this subsection 4.5(d).

(e) Procedures. Any meeting of the holders of any Specified Stock, and any action taken by the holders of any Specified Stock by written consent without a meeting, in order to elect or remove a director under this subsection 4.5, shall be held in accordance with the procedures and provisions of the Company's Bylaws, the California Corporations Code and applicable law regarding stockholder meetings and stockholder actions by written consent, as such are then in effect (including but not limited to procedures and provisions for determining the record date for shares entitled to vote).

(f) Termination. Notwithstanding anything in this subsection 4.5 to the contrary, the provisions of this subsection 4.5 shall cease to be of any further force or effect upon: (i) an acquisition of the Company by means of any transaction or series of transactions resulting in the consolidation or merger of the Company with or into any other entity in which the holders of the Company's outstanding shares immediately before such consolidation or merger do not, immediately after such consolidation or merger, retain voting rights representing a majority of the voting power of the surviving entity of such consolidation or merger; (ii) a sale of all or substantially all of the Company's assets; or (iii) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the aggregate public offering price (before deduction of underwriters' discounts and commissions) equals or exceeds \$10,000,000, and the public offering price per share of which equals or exceeds \$6.00 (such price per share of Common Stock to be appropriately adjusted to reflect Common Stock Events (as defined in Subsection 5.4)).



5. Conversion Rights. The outstanding shares of Preferred Stock shall be convertible into Common Stock as follows:

5.1 Optional Conversion.

(a) At the option of the holder thereof, each share of Preferred Stock shall be convertible at any time into fully paid and nonassessable shares of Common Stock as provided herein.

(b) Each holder of Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Preferred Stock or Common Stock, and shall give written notice to the Company at such office that such holder elects to convert the same and shall state therein the number of shares of Preferred Stock being converted. Thereupon the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

5.2 Automatic Conversion.

(a) Each share of Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein: (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the aggregate public offering price (before deduction of underwriters' discounts and commissions) equals or exceeds \$10,000,000 and the public offering price per share of which equals or exceeds \$6.00 (such price per share of Common Stock to be appropriately adjusted to reflect Common Stock Events (as defined in subsection 5.4)); or (ii) upon the Company's receipt of written consents to the conversion of all then outstanding Preferred Stock under this Section 5 from (1) holders of not less than a majority of the then outstanding shares of Series C Preferred Stock, (2) holders of not less than a majority of the then outstanding Series D Preferred Stock, and (3) holders of not less than a majority of the then outstanding shares of Preferred Stock voting together as a single class on an as-converted basis.

(b) Upon the occurrence of any event specified in subparagraph 5.2(a) above, the outstanding shares of Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Company or its transfer

agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders of Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

5.3 Conversion Price. Each share of outstanding Preferred Stock shall be convertible in accordance with subsection 5.1 or subsection 5.2 above into the number of shares of Common Stock which results from dividing the conversion price for such series of Preferred Stock that is in effect at the time of conversion (the "Conversion Price") into the Original Issue Price for such series of Preferred Stock. The initial Conversion Price for the Series A Preferred Stock shall be the Original Issue Price for the Series A Preferred Stock, the initial conversion price for the Series B Preferred Stock shall be the Original Issue Price of the Series B Preferred Stock, the initial Conversion Price for the Series C Preferred Stock shall be the Original Issue Price for the Series C Preferred Stock and the initial Conversion Price for the Series D Preferred Stock shall be the Original Issue Price for the Series D Preferred Stock. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as provided below.

5.4 Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event (as hereinafter defined), the Conversion Price of the Series A Preferred Stock, the Conversion Price for the Series B Preferred Stock, the Conversion Price for the Series C Preferred Stock and the Conversion Price for the Series D Preferred Stock shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price of such series of Preferred Stock in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the product so obtained shall thereafter be the Conversion Price for such series of Preferred Stock. The Conversion Price for a series of Preferred Stock shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event. As used herein, the term "Common Stock Event" shall mean (i) the issue by the Company of additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock.

5.5 Adjustments for Other Dividends and Distributions. If at any time or from time to time after the Original Issue Date the Company pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Company other than shares of Common Stock, then in each such event provision shall be made so that the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the

Series D Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Company which they would have received had their Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Preferred Stock or with respect to such other securities by their terms.

5.6 Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date the Common Stock issuable upon the conversion of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), then in any such event each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

5.7 Sale of Shares Below Conversion Price.

(a) Adjustment Formula. If at any time or from time to time after the Original Issue Date the Company issues or sells, or is deemed by the provisions of this subsection 5.7 to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in subsection 5.4, a dividend or distribution as provided in subsection 5.5 or a recapitalization, reclassification or other change as provided in subsection 5.6, for an Effective Price (as hereinafter defined) that is less than the Conversion Price for the Series B Preferred Stock and/or Series D Preferred Stock in effect immediately prior to such issue or sale, then, and in each such case, the Conversion Price for the Series B Preferred Stock and/or Series D Preferred Stock shall be reduced, as of the close of business on the date of such issue or sale, to the price obtained by multiplying such Conversion Price by a fraction:

(i) The numerator of which shall be the sum of (A) the number of Common Stock Equivalents Outstanding (as hereinafter defined) immediately prior to such issue or sale of Additional Shares of Common Stock plus (B) the quotient obtained by dividing the Aggregate Consideration Received (as hereinafter defined) by the Company for the total number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold) by the Conversion Price for such series of Preferred Stock in effect immediately prior to such issue or sale; and

(ii) The denominator of which shall be the sum of (A) the number of Common Stock Equivalents Outstanding immediately prior to such issue or sale plus (B) the number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold).

(b) Certain Definitions. For the purpose of making any adjustment required under this subsection 5.7:

(i) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company, whether or not subsequently reacquired or retired by the Company, other than: (A) shares of Common Stock issued or issuable upon conversion of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock; (B) shares of Common Stock (or options, warrants or rights therefor) issued to employees, officers, or directors of, or contractors, consultants, equipment lessors, institutional lenders or advisers to, the Company or any Subsidiary pursuant to stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other arrangements that are approved by the Board; and (C) a warrant for 285,714 shares of Common Stock issued to Intel Corporation and shares of Common Stock issuable upon exercise thereof;

(ii) The "Aggregate Consideration Received" by the Company for any issue or sale (or deemed issue or sale) of securities shall (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company; (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board; and (C) if Additional Shares of Common Stock, Convertible Securities or Rights or Options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options.

(iii) "Common Stock Equivalents Outstanding" shall mean the number of shares of Common Stock that is equal to the sum of (A) all shares of Common Stock of the Company that are outstanding at the time in question, plus (B) all shares of Common Stock of the Company issuable upon conversion of all shares of Preferred Stock or other Convertible Securities that are outstanding at the time in question, plus (C) all shares of Common Stock of the Company that are issuable upon the exercise of Rights or Options that are outstanding at the time in question assuming the full conversion or exchange into Common Stock of all such Rights or Options that are Rights or Options to purchase or acquire Convertible Securities into or for Common Stock.

(iv) "Convertible Securities" shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.

(v) The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of

Common Stock issued or sold, or deemed to have been issued or sold, by the Company under this subsection 5.7, into the Aggregate Consideration Received, or deemed to have been received, by the Company under this subsection 5.7, for the issue of such Additional Shares of Common Stock; and

(vi) "Rights or Options" shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

(c) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price of the Series B Preferred Stock or Series D Preferred Stock required under this subsection 5.7, if the Company issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect for a series of Preferred Stock, then the Company shall be deemed to have issued, at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of such Rights, Options or Convertible Securities upon their issuance and to have received, as the Aggregate Consideration Received for the issuance of such shares, an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Company upon the exercise in full of such Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

(i) if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, then the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses;

(ii) if the minimum amount of consideration payable to the Company upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events other than by reason of antidilution or similar protective adjustments, then the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; and

(iii) if the minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities.

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of

Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that there actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Preferred Stock.

5.8 Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for a series of Preferred Stock, the Company, at its expense, shall cause its Chief Financial Officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Preferred Stock at the holder's address as shown in the Company's books.

5.9 Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion.

5.10 Reservation of Stock Issuable Upon Conversion. The Company 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 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 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 Preferred Stock, the Company 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.

5.11 Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of the Preferred Stock shall be deemed given upon the earlier of actual receipt or deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Company, provided however, that if the address of such holder is overseas, any notice required pursuant to this Section must be by return receipt express courier, postage prepaid.

5.12 No Impairment. The Company shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

5.13 No Adjustment. Notwithstanding anything to the contrary set forth herein, the Company shall not be required to make any adjustment to the Conversion Price of the Series B Preferred Stock or Series D Preferred Stock in the case of the issuance of any shares of Common Stock or Preferred Stock, Rights, Options, Convertible Securities or other securities issued in or pursuant to the merger of Silicon Image, Inc., a California corporation, with and into the Company.

## 6. Restrictions and Limitations.

6.1 Class Protective Provisions. So long as at least 150,000 shares of Series A Preferred Stock, at least 40,000 shares of Series B Preferred Stock, at least 400,000 shares of Series C Preferred Stock or at least 400,000 shares of Series D Preferred Stock remain outstanding, the Company shall not, without the approval, by vote or written consent, of the holders of a majority of Preferred Stock then outstanding, voting as a single class:

(1) amend its Articles of Incorporation in any manner that would alter or change any of the rights, preferences, privileges, or restrictions of the Preferred Stock;

(2) amend its Articles of Incorporation in any other manner that would materially and adversely affect the rights, preferences, and privileges of any series of Preferred Stock;

(3) reclassify any outstanding shares of securities of the Company into shares having rights, preferences, or privileges senior to or on a parity with any series of Preferred Stock;

(4) merge or consolidate with or into any corporation if such merger or consolidation otherwise requires stockholder approval and would result in the stockholders of the Company immediately prior to such merger or consolidation holding less than majority of the voting power of the stock of the surviving corporation immediately after such merger or consolidation;

(5) sell all or substantially all the Company's assets in a single transaction or series of related transactions;

(6) liquidate or dissolve; or

(7) declare or pay any dividends (other than dividends payable solely in shares of its own Common Stock) or declare or make any other distribution (other than

Permitted Repurchases), directly or indirectly, on account of any shares of Common Stock now or hereafter outstanding.

6.2 Series C Protective Provisions. So long as at least 2,000,000 shares of Series C Preferred Stock remain outstanding, the Company shall not, without the approval, by vote or written consent, of the holders of a majority of the Series C Preferred Stock then outstanding, voting as a single class:

(1) amend its Articles of Incorporation so as to alter or change the rights, preferences or privileges of the Series C Preferred Stock;

(2) amend its Articles of Incorporation so as to increase or decrease the authorized number of shares of Series C Preferred Stock;

(3) create (by reclassification or otherwise) or issue any new class or series of shares having any rights, preferences or privileges senior to or on a parity with the Series C Preferred Stock;

(4) take any action that results in the redemption of any shares of Preferred Stock or Common Stock (except for Permitted Repurchases); or

(5) take any action that requires the consent of holder of a majority of Preferred Stock under paragraphs (4), (5), (6) or (7) of Section 6.1 above.

6.3 Series D Protective Provisions. So long as at least 1,000,000 shares of Series D Preferred Stock remain outstanding, the Company shall not, without the approval, by vote or written consent, of the holders of a majority of the Series D Preferred Stock then outstanding, voting as a single class:

(1) amend its Articles of Incorporation so as to alter or change the rights, preferences or privileges of the Series D Preferred Stock;

(2) amend its Articles of Incorporation so as to increase or decrease the authorized number of shares of Series D Preferred Stock;

(3) create (by reclassification or otherwise) or issue any new class or series of shares having any rights, preferences or privileges senior to or on a parity with the Series D Preferred Stock;

(4) take any action that results in the redemption of any shares of Preferred Stock or Common Stock (except for Permitted Repurchases); or

(5) take any action that requires the consent of holder of a majority of Preferred Stock under paragraphs (4), (5), (6) or (7) of Section 6.1 above.

7. Redemption. The Preferred Stock shall not be redeemable.



8. Miscellaneous.

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

8.2 Consent to Certain Transactions. Each holder of shares of Preferred Stock shall, by virtue of its acceptance of a stock certificate evidencing Preferred Stock, be deemed to have consented, for purposes of Sections 502, 503, and 506 of the California Corporations Code, to all Permitted Repurchases.

**ARTICLE V**

The Board of Directors of the corporation shall have the power to adopt, amend or repeal the Bylaws of the corporation.

**ARTICLE VI**

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 conduct of the affairs of the corporation shall be managed under the direction of the Board of Directors. The number of directors shall be fixed from time to time exclusively by resolution of the Board of Directors.

(B) Notwithstanding the foregoing provision of this Article VI, each director shall hold office until such director's successor is elected and qualified, or until such director's earlier death, resignation or removal. No decrease in the authorized number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(C) Subject to the rights of the holders of any series of Preferred Stock, any vacancy occurring in the Board of Directors for any cause, and any newly created directorship resulting from any increase in the authorized number of directors, shall, unless (i) the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders, or (ii) as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred.

(D) Subject to the rights of the holders of any series of Preferred Stock, any director or the entire Board of Directors may be removed by the holders of at least sixty-six and two-thirds percent (66-2/3%) of the shares then entitled to vote at an election of directors.

(E) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the corporation's initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock to the public (the "*Initial Public Offering*"), the directors shall be divided, with respect to the time for which they severally hold office, 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, with the number of directors in each class to be divided as equally as reasonably possible. The term of office of the Class I directors shall expire at the corporation's first annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class II directors shall expire at the corporation's second annual meeting of stockholders following the closing of the Initial Public Offering, and the term of office of the Class III directors shall expire at the corporation's third annual meeting of stockholders following the closing of the Initial Public Offering. At each annual meeting of stockholders commencing with the first annual meeting of stockholders following the closing of the Initial Public Offering, directors elected to succeed those directors of the class whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. Prior to the closing of the Initial Public Offering, or in the event the corporation is prohibited from dividing its board of directors through the operation of Section 2115 of the California General Corporation Law following the record date of the corporation's first annual meeting of stockholders following the closing of the Initial Public Offering, each director shall hold office until the next annual meeting of stockholders and until such director's successor is elected and qualified, or until such director's earlier death, resignation or removal.

(F) Election of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

(G) 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 of the corporation, and no action shall be taken by the stockholders by written consent.

(H) Advance notice of stockholder nominations for the election of directors of the corporation and of business to be brought by stockholders before any meeting of stockholders of the corporation shall be given in the manner provided in the Bylaws of the corporation. Business transacted at special meetings of stockholders shall be confined to the purpose or purposes stated in the notice of meeting.

(I) Subject to Section 6.5 of the Bylaws of the corporation, following the closing of the Initial Public Offering, stockholders of the corporation holding at least sixty-six and two-thirds percent (66-2/3%) of the corporation's outstanding voting stock then entitled to vote at an election of directors shall have the power to adopt, amend or repeal Bylaws of the corporation.

(J) Following the closing of the Initial Public Offering, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the corporation's outstanding voting stock then entitled to vote at an election of directors, voting together as a single class,

shall be required to alter, change, amend, repeal or adopt any provision inconsistent with this Article VI.

## ARTICLE VII

To the fullest extent permitted by law, no director of the corporation shall be personally liable for monetary damages for breach of fiduciary duty as a director. Without limiting the effect of the preceding sentence, if the Delaware General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII, shall eliminate, reduce or otherwise adversely affect any limitation on the personal liability of a director of the corporation existing at the time of such amendment, repeal or adoption of such an inconsistent provision.