

Form PTO-1594 (Rev. 6-95) **RECORDATION FORM COVER SHEET** U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office
OMB No. 0631-0011 (exp. 4/94) **TRADEMARKS ONLY**

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

1. Name of conveying party(ies):
Sistina Software, Inc., a Minnesota corporation

Individual(s) Association
 General Partnership Limited Partnership
 Corporation: State of Minnesota
 Other _____

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

Sistina Software, Inc.
1313 5th Street, S.E., Suite 111
Minneapolis, MN 55414

Individual(s) Association
 General Partnership Limited Partnership
 Corporation: State of Delaware
 Other _____

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

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: January 24, 2003

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)

4. Application number(s) or trademark number(s), and identification or description of the mark(s).

A. Trademark Application No(s). and description	B. Trademark Registration No(s). and description
76/291,923 (SISTINA & DESIGN)	2,630,022 (SISTINA) 2,572,010 (SISTINA) 2,688,979 (SISTINA SOFTWARE) 2,568,160 (SISTINA SOFTWARE)

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

Ester Martin Maillaro
FAEGRE & BENSON LLP
2500 Republic Plaza
370 Seventeenth Street
Denver, Colorado 80202-4004
303/607-3686

6. Total number of applications and registrations involved: 05

7. Total fee (37 CFR 3.41) \$140.00

Enclosed
 Authorized to be charged to deposit account for underpayment

8. Deposit Account number: 06-0029

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.

Ester Martin Maillaro *Ester M. Maillaro* May 6, 2003
Name of person signing Signature Date

Total number of pages including cover sheet, attachments, and document: 11

Mail documents to be recorded with required cover sheet information to:
Director - U.S. Patent and Trademark Office, Box Assignments
Washington, D.C. 20231

9T-638

State of Minnesota

SECRETARY OF STATE

Certificate of Merger

I, Mary Kiffmeyer, Secretary of State of Minnesota, certify that: the documents required to effectuate a merger between the entities listed below and designating the surviving entity have been filed in this office on the date noted on this certificate; and the qualification of any non-surviving entity to do business in Minnesota is terminated on the effective date of this merger.

Merger Filed Pursuant to Minnesota Statutes, Chapter: 302A

State of Formation and Names of Merging Entities:

MN: SISTINA SOFTWARE, INC.

DE: SISTINA SOFTWARE, INC.

State of Formation and Name of Surviving Entity:

DE: SISTINA SOFTWARE, INC.

Effective Date of Merger: January 24, 2003

Name of Surviving Entity After Effective Date of Merger:

SISTINA SOFTWARE, INC.

This certificate has been issued on: January 24, 2003.



Mary Kiffmeyer
Secretary of State.

ARTICLES OF MERGER
OF
SISTINA SOFTWARE, INC.
a Minnesota Corporation
WITH AND INTO
SISTINA SOFTWARE, INC.
a Delaware Corporation

Pursuant to Section 302A.621 and Section 302A.651 of the
Minnesota Business Corporation Act

Pursuant to Section 253 of the Delaware General Corporation Law and Sections 302A.621 and 302A.651 of the Minnesota Business Corporation Act, the undersigned officer of Sistina Software, Inc., a Minnesota corporation (hereinafter referred to as the "Parent Corporation"), which is the owner of at least 90% of the outstanding capital stock of Sistina Software, Inc., a Delaware corporation (hereinafter referred to as the "Subsidiary Corporation"), hereby executes and files these Articles of Merger:

FIRST. The Plan of Merger (the "Plan of Merger"), in the form of resolutions, duly adopted at a meeting held on January 7, 2003, of a Special Committee of the Board of Directors of the Parent Corporation, is attached hereto as Exhibit A. As provided in the Plan of Merger, the Subsidiary Corporation will continue as the surviving corporation.

SECOND: The number of outstanding shares of each class and series of the Subsidiary Corporation and the number of shares of each class and series owned by the Parent Corporation are as follows:

<u>Designation of Class and Series</u>	<u>Number of Outstanding Shares</u>	<u>Number of Shares Owned by Parent Corporation</u>
Common Stock, \$.001 par value per share	100	100

THIRD: There are no shareholders of the Subsidiary Corporation other than the Parent Corporation.

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FOURTH: The Plan of Merger has been duly approved by the Parent Corporation in accordance with Section 253 of the Delaware General Corporation Law and Sections 302A.621 and 302A.651 of the Minnesota Business Corporation Act.

FIFTH: The Subsidiary Corporation, pursuant to Section 302A.651, Subd. 4 of the Minnesota Business Corporation Act, hereby (a) agrees that it may be served with process in the State of Minnesota in a proceeding for the enforcement of an obligation of a constituent corporation and in a proceeding for the enforcement of the rights of dissenting shareholders of a constituent corporation against the Subsidiary Corporation; (b) irrevocably appoints the Secretary of State of the State of Minnesota as its agent for the service of process in any proceeding, and directs that process may be forwarded to the Subsidiary Corporation at 1313 Fifth Avenue S.E., Minneapolis, Minnesota 55414, Attention: President; and (c) agrees that it will promptly pay to the dissenting shareholders of the Parent Corporation the amount, if any, to which they are entitled under Section 302A.473 of the Minnesota Business Corporation Act.

Dated: January 24, 2003.

SISTINA SOFTWARE, INC., a Minnesota
Corporation

By Frank W. Cushing
Its President & CEO

MI.95609001

EXHIBIT A

PLAN OF MERGER

WHEREAS, the Special Committee deems it advisable and in the best interest of the Corporation to create a wholly owned subsidiary of the Corporation under the laws of the State of Delaware (the "Subsidiary").

WHEREAS, the Corporation will, immediately after formation of the Subsidiary, own all of the issued and outstanding capital stock of the Subsidiary, consisting of 100 shares of Common Stock.

WHEREAS, the Corporation desires to effect the merger of the Corporation with and into the Subsidiary (the "Merger") pursuant to Section 253 of the Delaware General Corporation Law and Section 302A.621 and Section 302A.651 of the Minnesota Business Corporation Act and to submit the Plan of Merger (as defined below) to the shareholders of the Corporation for such shareholders' approval.

WHEREAS, the Special Committee deems the Merger to be advisable and in the best interest of the Corporation, and recommends that the shareholders of the Corporation adopt the Plan of Merger.

RESOLVED, that the officers of the Corporation are, and each of them is, hereby authorized and directed for and on behalf of the Corporation to (i) incorporate the Subsidiary with the name of "Sistina Software, Inc." in accordance with the laws of the State of Delaware and with a Certificate of Incorporation in substantially the form attached hereto as Exhibit A, (ii) subscribe for 100 shares of Common Stock of the Subsidiary at a price of \$.10 per share for an aggregate purchase price of \$10 and (iii) name Frank Crusing and Matthew O'Keefe as directors of the Subsidiary until their successors are duly elected and qualified.

RESOLVED, that subject to obtaining the shareholder approval noted below, the Corporation shall merge itself with and into the Subsidiary in accordance with the statutes listed above and in accordance with the further resolutions set forth below (which resolutions shall constitute the Plan of Merger).

RESOLVED, that as a result of the Merger, the separate corporate existence of the Corporation shall cease, and the Subsidiary shall continue as the surviving corporation of the Merger (the "Surviving Corporation").

RESOLVED, that at the Effective Time (as defined below), each share of Common Stock of the Subsidiary issued and outstanding immediately prior to the Effective Time which is then owned beneficially or of record by the Corporation shall, by virtue of the Merger and without any action on the part of the Corporation, be cancelled and cease to exist, and no securities of the Surviving Corporation or any other corporation, or any money or other property, shall be issued to the Corporation in exchange therefor.

RESOLVED, that at the Effective Time, (i) each 58.30 issued and outstanding shares of Common Stock of the Corporation immediately prior to the Effective Time, shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation (any fractional share resulting from the foregoing conversion shall be rounded up to the next whole share) and (ii) each 29.15 issued and outstanding shares of Series A Convertible Preferred Stock of the Corporation immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation (any fractional share resulting from the foregoing conversion shall be rounded up to the next whole share).

RESOLVED, that from and after the Effective Time, each outstanding certificate theretofore representing shares of Common Stock and Series A Convertible Preferred Stock of the Corporation shall be deemed for all purposes to evidence ownership of and to represent the number of shares of Common Stock of the Surviving Corporation calculated in accordance with the foregoing resolution.

RESOLVED, that the Certificate of Incorporation and the By-laws of the Subsidiary in effect immediately prior to the Effective Time shall be the Certificate of Incorporation and the By-laws of the Surviving Corporation.

RESOLVED, that, notwithstanding anything in these resolutions to the contrary and any approval of the Merger by the Corporation's shareholders, the Board may terminate and abandon the Merger at any time prior to the Effective Time, and the Board may amend these resolutions at any time prior to the Effective Time, provided that any such amendment made subsequent to approval of the Merger by the Corporation's shareholders shall not (1) alter or change the amount or kind of shares to be received in exchange for or on conversion of all or any of the shares of any class or series of stock of the Corporation, (2) alter or change the terms of the Certificate of Incorporation of the surviving corporation to be effected by the merger or (3) alter or change any of the terms and conditions of these resolutions if such alteration or change would adversely affect the holders of any class or series of stock of the Corporation.

RESOLVED, that the Merger shall be effective upon the date of filing of a certificate of ownership and merger with the Secretary of State of the State of Delaware in the manner required by law (such date being the "Effective Time").

RESOLVED, that the officers of the Corporation are, and each of them is, hereby authorized and directed for and on behalf of the Corporation to make, sign and acknowledge a certificate of ownership and merger and articles of merger setting forth the foregoing Plan of Merger and such other information as required by law, and to cause such certificate and articles to be filed for record with the Secretaries of State of the State of Delaware and the State of Minnesota, respectively, in each case in the manner required by law.

RESOLVED, that the Plan of Merger be submitted for approval to the shareholders of the Corporation, and in the event that such shareholders shall vote in favor of the Plan of Merger, that the Plan of Merger shall be deemed approved.

[Amendment of Outstanding Options & Warrants]

WHEREAS, the Special Committee desires to adjust outstanding options to purchase Common Stock, issued under the Corporation's 1997 Omnibus Stock Plan (the "Plan"), and outstanding warrants to purchase Common Stock in connection with the Merger.

RESOLVED, that each option agreement relating to outstanding grants under the Plan shall automatically be, without any further action by the Special Committee, amended at the time of the Merger to provide that the number of shares of Common Stock of the Subsidiary subject to each such option shall be divided by 58.30 and the purchase price per share under each such option shall be multiplied by 58.30.

RESOLVED, the number of shares of Common Stock of the Subsidiary available for grants under the Plan shall be increased by the number of shares that are no longer subject to outstanding option grants as a result of the foregoing resolution.

RESOLVED, that each warrant to purchase Common Stock of the Corporation shall automatically be, without any further action by the Special Committee, amended at the time of the Merger to provide that the number of shares of Common Stock of the Subsidiary subject to each such warrant shall be divided by 58.30 and the purchase price per share under each such warrant shall be multiplied by 58.30.

EXHIBIT A

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SISTINA SOFTWARE, INC.**

I.

The name of this company is Sistina Software, Inc. (the "Company").

II.

The address of the registered office of the Company in the State of Delaware is:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801
New Castle County

The name of the Company's registered agent at said address is the Corporation Trust Company.

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("DGCL").

IV.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is seventy-seven million five hundred seventy-five thousand (77,575,000) shares, forty-five million one hundred fifty thousand (45,150,000) shares of which shall be Common Stock (the "Common Stock") and thirty-two million four hundred twenty-five thousand (32,425,000) shares of which shall be Preferred Stock (the "Preferred Stock"). Twenty-five million seven hundred thousand (25,700,000) shares of Preferred Stock shall be designated as Series B-1 Preferred Stock ("Series B-1 Preferred Stock"), one million seven hundred fifty thousand (1,750,000) shares of its Preferred Stock shall be designated as Series B-2 Preferred Stock ("Series B-2 Preferred Stock") and four million nine hundred seventy-five thousand (4,975,000) shares of its Preferred Stock shall be designated as Series B-3 Preferred Stock ("Series B-3 Preferred Stock").

B. The Preferred Stock shall have a par value of \$0.001 per share and the Common Stock shall have a par value of \$0.001 per share.

C. Subject to the limitations herein, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the then-outstanding Common Stock and Preferred Stock of the Company (voting together on an as-if-converted basis).

D. The rights, preferences, privileges, restrictions and other matters relating to the shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock are as follows:

1. DIVIDEND RIGHTS.

(a) Holders of the Series B-1 Preferred Stock and Series B-2 Preferred Stock, in preference to the holders of any other capital stock of the Company, shall be entitled to receive, on a pari passu basis, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of the Series B-1/B-2 Original Issue Price (as defined below) per annum on each outstanding share of Series B-1 Preferred Stock and Series B-2 Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(b) The "Series B-1/B-2 Original Issue Price" for a share of Series B-1 Preferred and for a share of Series B-2 Preferred Stock shall be \$0.50.

(c) So long as any shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on any other capital stock of the Company, or purchase, redeem or otherwise acquire for value any other capital stock of the Company until all dividends (set forth in Section (D)(1)(a) above) on the Series B-1 Preferred Stock and Series B-2 Preferred Stock shall have been paid or declared and set apart, except, subject to § D(2)(b) below, for:

(i) acquisitions by the Company of shares issued pursuant to equity compensation plans or acquisitions of shares from a founder of the Company at cost;

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal pursuant to the Right of First Refusal and Co-Sale Agreement, dated on or around January 24, 2003, by and among the Company and the other parties named therein (the "Right of First Refusal Agreement");

(iii) redemption of Series B-1 Preferred Stock or Series B-2 Preferred Stock pursuant to the redemption provisions set forth in Section (D)(5) of this Article IV; or

(iv) redemption of Series B-3 Preferred Stock pursuant to the redemption provisions set forth in Section (F)(5) of this Article IV.

(d) In the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(e) The provisions of Sections (D)(1)(c) and (D)(1)(d) above shall not apply to a dividend payable in Common Stock.

2. VOTING RIGHTS.

(a) General Rights.

(i) **Series B-1 Preferred Stock.** Each holder of shares of Series B-1 Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series B-1 Preferred Stock could be converted (pursuant to Section (D)(4) of this Article IV) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company. Except as otherwise provided herein or as required by law, the Series B-1 Preferred Stock shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

(ii) **Series B-2 Preferred Stock.** No holder of shares of Series B-2 Preferred Stock shall be entitled to vote such shares with respect to any matter, including the election of directors of the Company, presented to the stockholders of the Company for their action or consideration, except as required by Section 242(h)(2) of the Delaware General Corporation Law.

(b) **Separate Vote of Series B-1 Preferred Stock.** In addition to any other vote or consent required herein or by law, the Company shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least sixty-six and two-thirds percent of the then-outstanding shares of Series B-1 Preferred Stock (voting together as a single class):

(i) Amend, alter, repeal or waive any provision of this Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation);

(ii) Increase or decrease the authorized number of shares of Common Stock or Preferred Stock;

(iii) Authorize or designate, whether by reclassification or otherwise, any new class or series of stock or any other securities convertible into capital stock of the Company ranking on a parity with or senior to the Series B-1 Preferred Stock or Series B-2 Preferred Stock in right of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series;

(iv) Redeem, repurchase or pay dividends or other distributions with respect to capital stock of the Company, except for (A) acquisitions by the Company of shares issued pursuant to equity compensation plans or acquisitions of shares from a founder of the Company at cost; (B) in exercise of the Company's right of first refusal pursuant to the Right of First Refusal Agreement; (C) redemption of the Series B-1 Preferred Stock or Series B-2 Preferred Stock pursuant to the redemption provisions set forth in Section (D)(5) of this Article IV; or (D) redemption of Series B-3 Preferred Stock pursuant to the redemption provisions set forth in Section (E)(5) of this Article IV;

(v) Enter into an Asset Transfer or an Acquisition (each as defined in Section (D)(3) of this Article IV) involving the Company and/or its stockholders;

(vi) Take any action that results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock;

(vii) Effect a voluntary dissolution or liquidation of the Company;

(viii) Increase or decrease the number of members of the Company's Board of Directors; or

(ix) Issue any shares of Common Stock, Preferred Stock or options, warrants or other rights to acquire Common Stock or Preferred Stock, except for (A) shares of Common Stock or Preferred Stock issuable upon conversion of the Series B-1 Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock, as the case may be; (B) options, warrants or other Common Stock purchase rights to purchase an aggregate of 5,500,000 shares of Common Stock and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) after the Series B-1/B-2 Original Issue Date (as defined herein) to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock; (C) shares of Series B-1 Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock pursuant to Sections 3.2, 3.5 and 8.1, as applicable, of the Series B-1 and B-2 Stock Purchase Agreement, dated on or around January 24, 2003, by and between the Company and the other parties named therein (the "Purchase Agreement"); (D)

shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Board of Directors including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock; (E) shares of Common Stock or Preferred Stock issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board of Directors including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock; and (F) the issuance of shares pursuant to the exercise of options and warrants existing and outstanding as of the date of this certificate.

(e) **Election of Board of Directors.** The composition of the Board will be governed by Section 1.2 of that certain Voting Agreement, dated on or around January 24, 2003, by and between the Company and the other parties named therein.

3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of shares of any other capital stock of the Company, the holders of shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock, on a pari passu basis, shall be entitled to be paid out of the assets of the Company legally available for distribution (or the consideration received in such transaction) an amount per share equal to the Series B-1/B-2 Original Issue Price, plus any declared but unpaid dividends on such share (as adjusted for any stock splits, stock dividends, combinations, recapitalizations or the like) (the per share amount payable to a holder of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock pursuant to this sentence, the "Series B-1/B-2 Liquidation Preference"). If, upon any such liquidation, dissolution, or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of the Series B-1 Preferred Stock and Series B-2 Preferred Stock of the full Series B-1/B-2 Liquidation Preference set forth in this Section (D)(3)(a), then such assets (or consideration) shall be distributed among the holders of Series B-1 Preferred Stock and Series B-2 Preferred Stock at the time outstanding ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full Series B-1/B-2 Liquidation Preference of the Series B-1 Preferred Stock and Series B-2 Preferred Stock as set forth in Section (D)(3)(a), the assets of the Company legally available for distribution (or the consideration received in such transaction), if any, shall be distributed pursuant to Section (E)(3)(a) of this Article IV, and thereafter ratably and on a pari passu basis to the holders of the Common Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock on an as-if-converted to Common Stock basis.

(c) The following events shall be considered a liquidation under this Section (D)(3), and the holders of the Series B-1 Preferred Stock and Series B-2 Preferred Stock shall be paid their Series B-1/B-2 Liquidation Preference in connection with any of the following

events, in addition to any other consideration to which they may be entitled as stockholders of the Company under Section (D)(3)(h) above:

(i) (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company or its stockholders are a party which results in the stockholders of the Company immediately prior to such transaction or series of related transactions owning less than 50% of the voting power of the surviving entity immediately after such transaction or series of related transactions, excluding in each case the sale of shares of Preferred Stock pursuant to the Purchase Agreement (each, an "Acquisition"); or

(ii) a sale, lease, or other disposition of all or substantially all of the assets of the Company or a transfer or exclusive license of all or substantially all of the Company's intellectual property (an "Asset Transfer").

(iii) In any of such events, if the consideration received by the Company is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by subsection (iii)(B) below:

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

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in subsection (iii)(A) (1), (2) or

(3) to reflect the approximate fair market value thereof, as determined by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock.

4. CONVERSION RIGHTS.

The holders of the Series B-1 Preferred Stock and Series B-2 Preferred Stock shall have the rights set forth in this Section (D)(4) with respect to the conversion of the Series B-1 Preferred Stock and Series B-2 Preferred Stock into shares of Common Stock (the "Series B-1/B-2 Conversion Rights").

The number of shares of Common Stock to which a holder of Series B-1 Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the Series B-1 Conversion Rate then in effect (determined as provided in Section (D)(4)(b) of this Article IV) by the number of shares of Series B-1 Preferred Stock being converted.

(a) Optional Conversion.

(i) Series B-1 Preferred Stock. Subject to and in compliance with the provisions of this Section (D)(4), any shares of Series B-1 Preferred Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock.

(ii) Series B-2 Preferred Stock. Subject to and in compliance with the provisions of this Section (D)(4), each share of Series B-2 Preferred Stock may, at the option of the holder, be converted at any time into one fully paid and nonassessable share of Series B-1 Preferred Stock.

(b) Preferred Stock Conversion Rate. The conversion rate in effect at any time for conversion of the Series B-1 Preferred Stock (the "Series B-1 Preferred Conversion Rate") shall be the quotient obtained by dividing the Series B-1/B-2 Original Issue Price by the Series B-1 Conversion Price (determined as provided in Section (D)(4)(c) of this Article IV).

(c) Preferred Stock Conversion Price. The conversion price for shares of Series B-1 Preferred Stock shall initially be the Series B-1/B-2 Original Issue Price (the "Series B-1 Conversion Price"). The Series B-1 Conversion Price shall be adjusted from time to time in accordance with this Section (D)(4). All references to the Series B-1 Conversion Price shall mean the Series B-1 Conversion Price as so adjusted.

(d) Mechanics of Conversion.

(i) Series B-1 Preferred Stock. Each holder of Series B-1 Preferred Stock who desires to convert the same into shares of Common Stock pursuant to Section (D)(4)(a) of this Article IV shall surrender the certificate or certificates therefor, duly

endorsed, at the office of the Company or any transfer agent for the Series B-1 Preferred Stock, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series B-1 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 and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock as of the date of such conversion), any declared and unpaid dividends on the shares of Series B-1 Preferred Stock being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series B-1 Preferred Stock. Such conversion shall be deemed to have been made at the close of business on the date of the Company's receipt of the certificates representing the shares of Series B-1 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.

(ii) **Series B-2 Preferred Stock.** Each holder of Series B-2 Preferred Stock who desires to convert the same into shares of Series B-1 Preferred Stock pursuant to Section (D)(4)(a) of this Article IV shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series B-2 Preferred Stock, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series B-2 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 Series B-1 Preferred Stock to which such holder is entitled and any declared and unpaid dividends on the shares of Series B-2 Preferred Stock being converted shall continue to be declared and unpaid with respect to the shares of Series B-1 Preferred Stock received upon conversion. Such conversion shall be deemed to have been made at the close of business on the date of the Company's receipt of the certificates representing the shares of Series B-2 Preferred Stock to be converted, and the person entitled to receive the shares of Series B-1 Preferred Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Series B-1 Preferred Stock on such date.

(e) **Adjustment for Stock Splits and Combinations.** If, at any time or from time to time after the date that the first share of Series B-1 Preferred Stock and Series B-2 Preferred Stock is issued (the "Series B-1/B-2 Original Issue Date"), the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series B-1 Preferred Stock and Series B-2 Preferred Stock, the Series B-1 Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Series B-1/B-2 Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding

combination of the Series B-1 Preferred and Series B-2 Preferred Stock, the Series B-1 Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section (D)(4)(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Common Stock Dividends and Distributions.

If, at any time or from time to time after the Series B-1/B-2 Original Issue Date, the Company pays a dividend or other distribution in additional shares of Common Stock, the Series B-1 Conversion Price that is then in effect shall be decreased as of the time of such issuance, as follows:

(i) The Series B-1 Conversion Price shall be adjusted by multiplying the Series B-1 Conversion Price then in effect by a fraction equal to:

(A) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(ii) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series B-1 Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series B-1 Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series B-1 Conversion Price shall be adjusted pursuant to this Section (D)(4)(f) to reflect the actual payment of such dividend or distribution.

(g) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Series B-1/B-2 Original Issue Date, the Common Stock issuable upon the conversion of the Series B-1 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 pursuant to an Acquisition or Asset Transfer as defined in Section (D)(3) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section (D)(4)), then in any such event each holder of Series B-1 Preferred Stock shall have the right to convert such holder's shares of Series B-1 Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change as if such holder had converted all of such holder's shares of Series B-1 Preferred Stock into the maximum

number of shares of Common Stock into which such shares of Series B-1 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. In the event of such recapitalization, reclassification or change, and at the election of each holder of Series B-2 Preferred Stock, then-outstanding shares of Series B-2 Preferred shall be deemed converted into shares of Series B-1 Preferred Stock immediately prior to such recapitalization, reclassification or change, and then converted into the consideration in the recapitalization, reclassification or change as provided with respect to the Series B-1 Preferred Stock above.

(h) **Reorganizations, Mergers or Consolidations.** If, at any time or from time to time after the Series B-1/B-2 Original Issue Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than pursuant to an Acquisition or Asset Transfer as defined in Section (D)(3) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section (D)(4)), as a part of such capital reorganization, merger or consolidation provision shall be made so that the holders of the Series B-1 Preferred shall thereafter be entitled to receive upon conversion of the Series B-1 Preferred Stock the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion thereof would have been entitled on such capital reorganization, merger or consolidation subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section (D)(4) with respect to the rights of the holders of Series B-1 Preferred Stock and the Series B-2 Preferred Stock after the capital reorganization, merger or consolidation to the end that the provisions of this Section (D)(4) (including adjustment of the Series B-1 Conversion Price then in effect and the number of shares issuable upon conversion of the Series B-1 Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable. In the event of such capital reorganization, merger or consolidation, and at the election of each holder of Series B-2 Preferred Stock, then-outstanding shares of Series B-2 Preferred shall be deemed converted into shares of Series B-1 stock immediately prior to the effective date of such capital reorganization, merger or consolidation and then converted into the consideration in the capital reorganization, merger or classification as provided with respect to the Series B-1 Preferred Stock above.

(i) **Sale of Shares Below Series B-1 Conversion Price.**

(A) If, at any time or from time to time after the Series B-1/B-2 Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this Section (D)(4)(i) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as a dividend or other distribution on any class of stock as provided in Section (D)(4)(f), and other than a subdivision or combination of shares of Common Stock as provided in Section (D)(4)(e), for an Effective Price (as defined below) less than the then-effective Series B-1 Conversion Price, then and in each such case, the then-existing Series B-1 Conversion Price shall be adjusted, as of the opening of business on the date of such issue or sale

to a price calculated by dividing (i) the sum of (X) the result obtained by multiplying the number of shares of Common Stock outstanding or issuable upon the exercise, conversion or exchange of any class or series of Preferred Stock, options, warrants or other convertible securities immediately prior to such issue or sale by the Series B-1 Conversion Price then in effect, and (Y) the Aggregate Consideration, if any, received by the Company upon such issue and sale, by (ii) the number of shares of Common Stock outstanding or issuable upon the exercise, conversion or exchange of any class or series of Preferred Stock, options, warrants or other convertible securities immediately after such issue or sale.

(B) No adjustment shall be made to the Series B-1 Conversion Price in an amount less than one cent per share. Any adjustment otherwise required by this Section (D)(4)(i) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the Series B-1 Conversion Price.

(C) For the purpose of making any adjustment required under this Section (D)(4)(i), the aggregate consideration received by the Company for any issue or sale of securities (the "Aggregate Consideration") shall be defined as: (A) to the extent it consists of cash, the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, the fair value of that property as determined in good faith by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) 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 of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock, to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(D) For the purpose of the adjustment required under this Section (D)(4)(i), if the Company issues or sells (x) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities, and if the Effective Price (as defined below) of such Additional Shares of Common Stock is less than the Series B-1 Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration 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:

(1) in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options; and

(2) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); *provided* that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(3) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided further*, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities.

(4) No further adjustment of the Series B-1 Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series B-1 Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series B-1 Conversion Price, which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional 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 the Convertible Securities actually converted, 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 of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Series B-1 Preferred Stock.

(E) For the purpose of making any adjustment to the Series B-1 Conversion Price required under this Section (D)(4)(i), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section (D)(4)(i) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(1) shares of Common Stock or Preferred Stock issued upon conversion of the Series B-1 Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock, as the case may be;

(2) options, warrants or other Common Stock purchase rights to purchase an aggregate of 5,500,000 shares of Common Stock and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) after the Series B-1/B-2 Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock;

(3) shares of Series B-1 Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock issued pursuant to Sections 3.2, 3.5 and 8.1, as applicable, of the Purchase Agreement;

(4) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Board of Directors including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock;

(5) shares of Common Stock or Preferred Stock issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board of Directors including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock; and

(6) the issuance of shares pursuant to the exercise of options and warrants existing and outstanding as of the date of this certificate.

References to Common Stock in the subsections of this subclause (E) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to Section (D)(4)(i). 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 Section (D)(4)(i), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section (D)(4)(i), for such Additional Shares of Common Stock.

(j) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series B-1 Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series B-1 Preferred Stock, the Company, at its expense, shall 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 Series B-1 Preferred Stock and Series B-2 Preferred Stock, at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series B-1 Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock, and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series B-1 Preferred Stock.

(k) **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section (D)(3) of this Article IV) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section (D)(3) of this Article IV), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series B-1 Preferred Stock and Series B-2 Preferred Stock at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of sixty-six and two-thirds percent of the outstanding Series B-1 Preferred Stock) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(l) **Automatic Conversion.**

(i) **Series B-1 Preferred Stock.** Each share of Series B-1 Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Series B-1 Conversion Price, (A) at any time upon the affirmative election of the holders of at least sixty-six and two-thirds percent of the then-outstanding shares of the Series B-1 Preferred Stock, voting together as a single class, or (B) immediately upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least \$2.50 (as adjusted for stock dividends, combinations, recapitalizations and the like with respect to such stock after the filing date hereof), and (ii) the aggregate cash proceeds to the Company (net of underwriting commissions and expenses) are at least \$40,000,000 (the "Qualified Public Offering"). Upon

such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section (D)(4)(d) of this Article IV.

(ii) **Series B-2 Preferred Stock.** Each share of Series B-2 Preferred Stock shall automatically be converted into one share of Series B-1 Preferred Stock, and then each share of Series B-1 Preferred Stock shall automatically be converted into shares of Common Stock pursuant to Section (D)(4)(I)(i) above upon the occurrence of either of the events set forth in clauses (A) or (B) of Section (D)(4)(I)(i) above.

(iii) **Series B-1 Preferred Stock and Series B-2 Preferred Stock.** In the event a holder of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock fails to satisfy such holder's obligations, if any, under Section 3.5 of the Purchase Agreement, each share of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock held by such holder shall automatically be converted into one (1) share of Series B-3 Preferred Stock with the rights and preferences set forth in Section (E) of this Article IV, effective upon the effective time of the "Series B-3 Conversion" (as defined in the Purchase Agreement).

(iv) Upon the occurrence of any of the events specified in Section (D)(4)(I)(i) or (iii) above, the outstanding shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock shall be converted automatically without 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 or Series B-3 Preferred Stock, as applicable, issuable upon such conversion unless the certificates evidencing such shares of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock, as applicable, are either delivered to the Company or its transfer agent as provided below, or the holder thereof 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 automatic conversion of the Series B-1 Preferred Stock and Series B-2 Preferred Stock, the holder or holders, as applicable, of the Series B-1 Preferred Stock and/or Series B-2 Preferred Stock, as applicable, shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred 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 Series B-3 Preferred Stock into which the shares of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock, as applicable, were convertible (such certificate or certificates to be immediately cancelled upon automatic conversion of such shares of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock, as applicable, to shares of Series B-3 Preferred Stock), the number of shares of Series B-1 Preferred Stock into which the shares of Series B-2 Preferred Stock surrendered were convertible (such certificate or certificates to be immediately cancelled upon the automatic conversion of such shares of Series B-1 Preferred Stock to shares of Common Stock), or for the number of shares of Common Stock into which the shares of Series B-1 Preferred Stock surrendered and/or issued upon conversion of the shares of Series B-2 Preferred Stock were convertible on the date on which such automatic conversion

occurred. Any declared and unpaid dividends shall be paid in accordance with the provisions of Section (D)(4)(d).

(iii) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series B-1 Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series B-1 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 any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of the Common Stock (as determined by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock on the date of conversion).

(a) **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 and Series B-1 Preferred Stock, solely for the purpose of effecting the conversion of the shares of the Series B-1 Preferred Stock and Series B-2 Preferred Stock, such number of its shares of Common Stock and Series B-1 Preferred Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B-1 Preferred Stock and Series B-2 Preferred Stock, respectively. If at any time the number of authorized but unissued shares of Common Stock or Series B-1 Preferred Stock shall not be sufficient to effect the conversion of all then-outstanding shares of the Series B-1 Preferred Stock and Series B-2 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 and Series B-1 Preferred Stock to such number of shares as shall be sufficient for such purpose. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Series B-3 Preferred Stock, solely for the purpose of effecting the conversion of the shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock, such number of its shares of Series B-3 Preferred Stock as shall from time to time be sufficient to effect the conversion of the Series B-1 Preferred Stock and Series B-2 Preferred Stock as contemplated by Section (4)(D)(1)(iii) above. If at any time the number of authorized but unissued Series B-3 Preferred Stock shall not be sufficient to effect such conversion, 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 Series B-3 Preferred Stock to such number of shares as shall be sufficient for such purpose.

(o) **Notices.** Any notice required by the provisions of this Section (D)(4) shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient and if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(p) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock, Series B-1 Preferred Stock or Series B-3 Preferred Stock upon conversion of shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock, as applicable, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock, Series B-1 Preferred Stock or Series B-3 Preferred Stock in a name other than that in which the shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock, as the case may be, so converted were registered.

(q) **No Dilution or Impairment.** Without the written consent of the holders of at least sixty-six and two-thirds percent of the then-outstanding shares of Series B-1 Preferred Stock as required under Section (D)(2)(b) of this Article IV, the Company shall not amend this Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking 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 Series B-1 Preferred Stock and Series B-2 Preferred Stock against dilution or other impairment.

5. REDEMPTION.

(a) The Company shall be obligated to redeem the Series B-1 Preferred Stock and Series B-2 Preferred Stock as follows:

(i) Each holder of shares of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock may require the Company, to the extent it may lawfully do so, to redeem the Series B-1 Preferred Stock and/or Series B-2 Preferred Stock on the sixth anniversary of the Series B-1/B-2 Original Issue Date (the "Series B-1/B-2 Redemption") by providing notice to the Company on or prior to a date sixty (60) days after the sixth anniversary of the Series B-1/B-2 Original Issue Date. The Company shall effect such redemptions on the applicable Series B-1/B-2 Redemption Date (as defined below) by paying in cash in exchange for each share of Series B-1 Preferred Stock and Series B-2 Preferred Stock to be redeemed a sum equal to the Series B-1/B-2 Original Issue Price plus an amount equal to ten percent (10%) per annum from the Series B-1/B-2 Original Issue Date, compounded annually. The total amount to be paid for the shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock is hereinafter referred to as the "Series B-1/B-2 Redemption Price." Shares to be redeemed pursuant to this Section (D)(5)(a) shall be redeemed from each participating holder of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock pro rata based on the portion of the aggregate Series B-1/B-2 Redemption Price payable to such holder.

(ii) In the event of a Series B-1/B-2 Redemption, the Company shall be required to redeem such shares in two equal annual installments commencing on a date no later than ninety (90) days after the sixth anniversary of the Series B-1/B-2 Original Issue Date (each such redemption date, a "Series B-1/B-2 Redemption Date").

(iii) At least twenty (20) days prior to each Series B-1/B-2 Redemption Date, the Company shall send a notice (each, a "Series B-1/B-2 Redemption Notice") to all holders of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock to be redeemed setting forth (A) the Series B-1/B-2 Redemption Price for the shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock to be redeemed; and (B) the place at which such holders may obtain payment of the Series B-1/B-2 Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at a Series B-1/B-2 Redemption Date, then it shall redeem such shares from each holder pro rata (based on the portion of the aggregate Series B-1/B-2 Redemption Price payable to such holder of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or prior to each Series B-1/B-2 Redemption Date, the Company shall deposit the Series B-1/B-2 Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Series B-1/B-2 Redemption Date, the Series B-1/B-2 Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section (D)(5)(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section (D)(4) hereof no later than the first (1st) day preceding the Series B-1/B-2 Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section (D)(5)(b) remaining unclaimed at the expiration of one (1) year following the Series B-1/B-2 Redemption Date shall be returned to the Company promptly upon its written request.

(c) On or after each Series B-1/B-2 Redemption Date, each holder of shares of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner and at the place designated in the Series B-1/B-2 Redemption Notice, and thereupon the Series B-1/B-2 Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after each Series B-1/B-2 Redemption Date, as applicable, unless there shall have been a default in payment of the Series B-1/B-2 Redemption Price or the Company is unable to pay the Series B-1/B-2 Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as a holder of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock (except the right to receive the Series B-1/B-2 Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(d) In the event of redemption of any shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock, the Series B-1/B-2 Conversion Rights (as defined in Section (D)(4)) for such Series B-1 Preferred Stock or Series B-2 Preferred Stock shall terminate as to the shares designated for redemption at the close of business on the first (1st) day preceding the Series B-1/B-2 Redemption Date, unless default is made in payment of the Series B-1/B-2 Redemption Price or the Company does not have sufficient legally available funds.

E. In addition to the provisions regarding conversion of Series B-1 Preferred Stock and Series B-2 Preferred Stock set forth in Section (D)(4)(l) above, the rights, preferences, privileges, restrictions and other matters relating to shares of Series B-3 Preferred Stock are as follows:

1. **DIVIDEND RIGHTS.**

(a) After the payment of any dividend to the holders of Series B-1 Preferred Stock and Series B-2 Preferred Stock but before any such payment to the holders of the Company's Common Stock, the holders of the Series B-3 Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefore, cash dividends at the rate of eight percent (8%) of the Series B-3 Original Issue Price (as defined below) per annum on each outstanding share of Series B-3 Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(b) The "Series B-3 Original Issue Price" for a share of Series B-3 Preferred shall be \$0.50.

(c) So long as any shares of Series B-3 Preferred Stock are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on any other capital stock of the Company, or purchase, redeem or otherwise acquire for value any other capital stock of the Company until all dividends (set forth in Section (E)(1)(a) above) on the Series B-3 Preferred Stock shall have been paid or declared and set apart, except for:

(i) acquisitions by the Company of shares issued pursuant to equity compensation plans or acquisitions of shares from a founder of the Company at cost;

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal pursuant to the Right of First Refusal Agreement;

(iii) redemption of Series B-1 Preferred Stock or Series B-2 Preferred Stock pursuant to the redemption provisions set forth in Section (D)(5) of this Article IV;

(iv) redemption of Series B-3 Preferred Stock pursuant to the redemption provisions set forth in Section (E)(5) of this Article IV; or

(v) payment of dividends or declarations on the Series B-1 Preferred Stock or the Series B-2 Preferred Stock as described in Section (D)(1) of this Article IV.

(d) In the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Series B-3 Preferred Stock in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(e) The provisions of Sections (E)(1)(c) and (E)(1)(d) above shall not apply to a dividend payable in Common Stock.

2. **VOTING RIGHTS.** Each holder of shares of Series B-3 Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series B-3 Preferred Stock could be converted (pursuant to Section (E)(4) of this Article IV) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company. Except as otherwise provided herein or as required by law, the Series B-3 Preferred Stock shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class or series, and may act by written consent in the same manner as the Common Stock.

3. **LIQUIDATION RIGHTS.**

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, following payment in full of the Series B-1/B-2 Liquidation Preference to the holders of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock, but before any distribution or payment shall be made to the holders of shares of any other capital stock of the Company, the holders of shares of Series B-3 Preferred Stock shall be entitled to be paid out of the assets of the Company legally available for distribution (or the consideration received in such transaction) an amount per share equal to the Series B-3 Original Issue Price (as adjusted for any stock splits, stock dividends, combinations, recapitalizations or the like) (the per share amount payable to a holder of Series B-3 Preferred Stock pursuant to this sentence, the "Series B-3 Liquidation Preference"). If, upon any such liquidation, dissolution, or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of the Series B-3 Preferred Stock of the full Series B-3 Liquidation Preference set forth in this Section (F)(3)(a), then such assets (or consideration) shall be distributed among the holders of Series B-3 Preferred Stock at the time outstanding ratably in proportion to the full amounts to which they would otherwise be respectively entitled. The Series B-3 Preferred Stock shall not be entitled to payment of any amount other than the Series

B-3 Liquidation Preference upon the occurrence of a liquidation as defined in Section (E)(3)(b) immediately below.

(b) The following events shall be considered a liquidation under this Section (E)(3):

(i) an Acquisition as defined in Section (D)(3)(c)(i) of this Article IV; or

(ii) Asset Transfer as defined in Section (D)(3)(c)(ii) of this Article IV.

(iii) In any of such events, if the consideration received by the Company is other than cash, its value will be deemed its fair market value as determined in accordance with Section (D)(3)(c)(iii) of this Article IV.

4. CONVERSION RIGHTS.

The holders of the Series B-3 Preferred Stock shall have only the rights set forth in this Section (E)(4) with respect to the conversion of the Series B-3 Preferred Stock into shares of Common Stock (the "Series B-3 Conversion Rights").

The number of shares of Common Stock to which a holder of Series B-3 Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the Series B-3 Conversion Rate then in effect (determined as provided in Section (E)(4)(b) by the number of shares of Series B-3 Preferred Stock being converted.

(a) Automatic Conversion.

(i) Each share of Series B-3 Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Series B-3 Conversion Price, (A) at any time upon the affirmative election of the holders of at least sixty-six and two-thirds percent of the then-outstanding shares of the Series B-1 Preferred Stock, voting together as a single class, or (B) immediately upon the closing of a Qualified Public Offering.

(ii) Upon the occurrence of any of the events specified in Section (E)(4)(a)(i) above, the outstanding shares of Series B-3 Preferred Stock shall be converted automatically without 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 Series B-3 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 Series B-3 Preferred Stock, the holders of Series B-3 Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series B-3 Preferred 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 Series B-3 Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(b) **Series B-3 Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series B-3 Preferred Stock (the "Series B-3 Conversion Rate") shall be (and the number of shares of Common Stock to be received upon conversion of each share of Series B-3 Preferred Stock shall be equal to) the quotient obtained by dividing the Series B-3 Original Issue Price by the product of (i) two (2) and (ii) the Series B-3 Conversion Price (determined as provided in Section (E)(4)(c)).

(c) **Series B-3 Preferred Conversion Price.** The conversion price for shares of Series B-3 Preferred shall initially be the Series B-3 Original Issue Price (the "Series B-3 Conversion Price"). The Series B-3 Conversion Price shall be adjusted from time to time in accordance with this Section (E)(4). All references to the Series B-3 Conversion Price shall mean the Series B-3 Conversion Price as so adjusted.

(d) **Adjustment for Stock Splits and Combinations.** If, at any time or from time to time after the date that the first share of Series B-3 Preferred Stock is issued (the "Series B-3 Original Issue Date"), the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series B-3 Preferred Stock, the Series B-3 Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Series B-3 Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series B-3 Preferred Stock, the Series B-3 Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section (E)(4)(d) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(e) **Adjustment for Common Stock Dividends and Distributions.** If, at any time or from time to time after the Series B-3 Original Issue Date, the Company pays a dividend or other distribution in additional shares of Common Stock, the Series B-3 Conversion Price, as applicable, that is then in effect shall be decreased as of the time of such issuance, as follows:

(i) The Series B-3 Conversion Price shall be adjusted by multiplying the Series B-3 Conversion Price then in effect by a fraction equal to:

(A) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(ii) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series B-3 Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series B-3 Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series B-3 Conversion Price shall be adjusted pursuant to this Section (E)(4)(e) to reflect the actual payment of such dividend or distribution.

(f) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Series B-3 Original Issue Date, the Common Stock issuable upon the conversion of the Series B-3 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 an Acquisition or Asset Transfer as defined in Section (E)(3) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section (E)(4)), then in any such event each holder of Series B-3 Preferred Stock shall have the right to convert such holder's shares of Series B-3 Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change as if such holder had converted all of such holder's shares of Series B-3 Preferred Stock into the maximum number of shares of Common Stock into which such shares of Series B-3 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.

(g) **Reorganizations, Mergers or Consolidations.** If, at any time or from time to time after the Series B-3 Original Issue Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section (E)(3) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section (E)(4)), as a part of such capital reorganization, merger or consolidation provision shall be made so that the holders of the Series B-3 Preferred Stock shall thereafter be entitled to receive upon conversion of the Series B-3 Preferred Stock the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion thereof would have been entitled on such capital reorganization, merger or consolidation subject to adjustment in respect of such stock or securities by the terms thereof. In any such case.

appropriate adjustment shall be made in the application of the provisions of this Section (E)(4) with respect to the rights of the holders of Series B-3 Preferred Stock after the capital reorganization, merger or consolidation to the end that the provisions of this Section (E)(4) (including adjustment of the Series B-3 Conversion Price then in effect and the number of shares issuable upon conversion of the Series B-3 Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(h) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series B-3 Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series B-3 Preferred Stock, the Company, at its expense, shall 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 Series B-3 Preferred Stock at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the Series B-3 Conversion Price at the time in effect, and (ii) the type and amount, if any, of other property which at the time would be received upon conversion of the Series B-3 Preferred Stock.

(i) **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section (E)(3)) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section (E)(3)), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series B-3 Preferred Stock at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of sixty-six and two-thirds percent of the outstanding Series B-1 Preferred Stock) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(j) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series B-3 Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series B-3 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 any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction

multiplied by the Common Stock's fair market value (as determined by the Board of Directors, including the affirmative vote of a majority of the representatives elected by the holders of the Series B-1 Preferred Stock on the date of conversion).

(k) **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 Series B-3 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 B-3 Preferred Stock. 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 B-3 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.

(l) **Notices.** Any notice required by the provisions of this Section (E)(4) shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient and if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(m) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series B-3 Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series B-3 Preferred Stock so converted were registered.

5. REDEMPTION.

(a) The Company shall be obligated to redeem the Series B-3 Preferred Stock as follows:

(i) After the redemption of shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock pursuant to Section (D)(5) of this Article IV has been completed, each holder of shares of Series B-3 Preferred Stock may require the Company, to the extent it may lawfully do so, to redeem the Series B-3 Preferred Stock on the sixth anniversary of the Series B-1/B-2 Original Issue Date (the "Series B-3 Redemption") by providing notice to the Company on or prior to a date sixty (60) days after the sixth anniversary of the Series B-1/B-2 Original Issue Date. The Company shall effect such redemptions on the applicable Series B-3 Redemption Date (as defined below) by paying in cash in exchange for each share of B-3 Preferred Stock to be redeemed a sum equal to the Series B-3 Original Issue Price plus an

amount equal to ten percent (10%) per annum from the Series B-1/B-2 Original Issue Date, compounded annually. The total amount to be paid for the shares of Series B-3 Preferred Stock is hereinafter referred to as the "Series B-3 Redemption Price." Shares to be redeemed pursuant to this Section (E)(5)(a) shall be redeemed from each participating holder of Series B-3 Preferred Stock pro rata based on the portion of the aggregate Series B-3 Redemption Price payable to such holder.

(ii) In the event of a Series B-3 Redemption, the Company shall be required to redeem such shares in two equal annual installments, commencing on a date no later than ninety (90) days after the sixth anniversary of the Series B-1/B-2 Original Issue Date (each such redemption date, a "Series B-3 Redemption Date").

(iii) At least twenty (20) days prior to each Series B-3 Redemption Date, the Company shall send a notice (each, a "Series B-3 Redemption Notice") to all holders of Series B-3 Preferred Stock to be redeemed setting forth (A) the Series B-3 Redemption Price for the shares of Series B-3 Preferred Stock to be redeemed; and (B) the place at which such holders may obtain payment of the Series B-3 Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Series B-3 Redemption Date, then it shall redeem such shares from each holder pro rata (based on the portion of the aggregate Series B-3 Redemption Price payable to such holder of Series B-3 Preferred Stock) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or prior to the Series B-3 Redemption Date, the Company shall deposit the Series B-3 Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Series B-3 Redemption Date, the Series B-3 Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section (E)(5)(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section (E)(4) hereof no later than the first (1st) day preceding the Series B-3 Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section (E)(5)(b) remaining unclaimed at the expiration of one (1) year following the Series B-3 Redemption Date shall be returned to the Company promptly upon its written request.

(c) On or after each Series B-3 Redemption Date, each holder of shares of Series B-3 Preferred Stock to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner and at the place designated in the Series B-3 Redemption Notice, and thereupon the Series B-3 Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after each Series B-3 Redemption Date, unless there shall have been a default in payment of the Series B-3 Redemption Price or the Company is

unable to pay the Series B-3 Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as a holder of Series B-3 Preferred Stock (except the right to receive the Series B-3 Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Series B-3 Preferred Stock are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series B-3 Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(d) In the event of redemption of any shares of Series B-3 Preferred Stock, the Series B-3 Conversion Rights (as defined in Section (E)(4)) for such Series B-3 Preferred Stock shall terminate as to the shares designated for redemption at the close of business on the first (1st) day preceding the Series B-3 Redemption Date, unless default is made in payment of the Series B-3 Redemption Price or the Company does not have sufficient legally available funds.

V.

A. The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.

B. To the extent permitted under the DGCL, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, any appeal in such an action, suit or proceeding and any inquiry or investigation that could lead to such an action, suit or proceeding (whether or not by or in the right of the Company), by reason of the fact that such person is or was a director of the Company, against all judgments, penalties (including excise and similar taxes), fines, settlements and expenses (including attorneys' fees and court costs) actually and reasonably incurred by such person in connection with such action, suit or proceeding to the fullest extent permitted by any applicable law, and such indemnity shall inure to the benefit of the heirs, executors and administrators of any such person so indemnified pursuant to this Article V. The right to indemnification under this Article V shall be a contract right and shall include, with respect to directors, the right to be paid by the Company the expenses incurred in defending any such proceeding in advance of its disposition; provided, however, that, if the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director in advance of the final disposition of a proceeding shall be made only upon delivery to the Company of an undertaking, by or on behalf of such director, to repay all amounts so advanced if it shall ultimately be determined that such director is not entitled to be indemnified under this Article V or otherwise. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall not be deemed exclusive of any other right to which those seeking indemnification may be entitled under any law, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. Any repeal or amendment of this Article V by the stockholders of the Company or by changes in applicable law shall, to the extent permitted by applicable law, be

prospective only, and not adversely affect the indemnification of any person who may be indemnified at the time of such repeal or amendment.

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

VI.

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

A. The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Amended and Restated Certificate of Incorporation.

B. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company; provided however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

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

* * * *

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 24 2003

Mary Hoffmeyer
Secretary of State

Delaware

PAGE 1

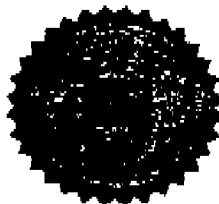
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"SISTINA SOFTWARE, INC.", A MINNESOTA CORPORATION,

WITH AND INTO "SISTINA SOFTWARE, INC." UNDER THE NAME OF "SISTINA SOFTWARE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-FOURTH DAY OF JANUARY, A.D. 2003, AT 5:42 O'CLOCK P.M.

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



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3616795 8100M

AUTHENTICATION: 2223788

030051502

DATE: 01-24-03

TRADEMARK
REEL: 002645 FRAME: 0479

FAEGRE & BENSON

17711 01/24/03 16 37 57 STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 05:47 PM 01/24/2003
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CERTIFICATE OF OWNERSHIP AND MERGER

OF

**SISTINA SOFTWARE, INC.,
a Minnesota Corporation,**

WITH AND INTO

**SISTINA SOFTWARE, INC.,
a Delaware Corporation**

Pursuant to Section 253 of the
General Corporation Law of the State of Delaware

The undersigned corporation, Sistina Software, Inc., a Minnesota corporation (the "Corporation"), does hereby certify to the following relating to the merger (the "Merger") of the Corporation with and into Sistina Software, Inc., a Delaware corporation (the "Subsidiary"), with the Subsidiary remaining as the surviving corporation:

FIRST: That the Corporation is incorporated pursuant to the laws of the State of Minnesota. The Subsidiary is incorporated pursuant to the General Corporation Law of the State of Delaware (the "DGCL").

SECOND: That the Corporation owns all of the outstanding shares of the capital stock of the Subsidiary.

THIRD: That the Corporation, by the resolutions, duly adopted at a meeting held on January 7, 2003, of a Special Committee of the Board of Directors of the Corporation attached hereto as Exhibit A and incorporated herein by reference, determined to merge itself into the Subsidiary pursuant to Section 253 of the DGCL.

FOURTH: That the Subsidiary shall be the surviving corporation of the Merger.

FIFTH: That the Merger has been approved, adopted, certified, executed and acknowledged by the Corporation in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, this Certificate of Ownership and Merger has been executed by the duly authorized officer of Sistina Software, Inc. this 24th day of January 2003.

SISTINA SOFTWARE, INC., a Minnesota Corporation

By Franklin C. Cousins
Its President & CEO

141-45666-01

EXHIBIT A

WHEREAS, the Special Committee deems it advisable and in the best interest of the Corporation to create a wholly owned subsidiary of the Corporation under the laws of the State of Delaware (the "Subsidiary").

WHEREAS, the Corporation will, immediately after formation of the Subsidiary, own all of the issued and outstanding capital stock of the Subsidiary, consisting of 100 shares of Common Stock.

WHEREAS, the Corporation desires to effect the merger of the Corporation with and into the Subsidiary (the "Merger") pursuant to Section 253 of the Delaware General Corporation Law and Section 302A.621 and Section 302A.651 of the Minnesota Business Corporation Act and to submit the Plan of Merger (as defined below) to the shareholders of the Corporation for such shareholders' approval.

WHEREAS, the Special Committee deems the Merger to be advisable and in the best interest of the Corporation, and recommends that the shareholders of the Corporation adopt the Plan of Merger.

RESOLVED, that the officers of the Corporation are, and each of them is, hereby authorized and directed for and on behalf of the Corporation to (i) incorporate the Subsidiary with the name of "Sistina Software, Inc." in accordance with the laws of the State of Delaware and with a Certificate of Incorporation in substantially the form attached hereto as Exhibit A, (ii) subscribe for 100 shares of Common Stock of the Subsidiary at a price of \$10 per share for an aggregate purchase price of \$10 and (iii) name Frank Crusing and Matthew O'Keefe as directors of the Subsidiary until their successors are duly elected and qualified.

RESOLVED, that subject to obtaining the shareholder approval noted below, the Corporation shall merge itself with and into the Subsidiary in accordance with the statutes listed above and in accordance with the further resolutions set forth below (which resolutions shall constitute the Plan of Merger).

RESOLVED, that as a result of the Merger, the separate corporate existence of the Corporation shall cease, and the Subsidiary shall continue as the surviving corporation of the Merger (the "Surviving Corporation").

RESOLVED, that at the Effective Time (as defined below), each share of Common Stock of the Subsidiary issued and outstanding immediately prior to the Effective Time which is then owned beneficially or of record by the Corporation shall, by virtue of the Merger and without any action on the part of the Corporation, be cancelled and cease to exist, and no securities of the Surviving Corporation or any other corporation, or any money or other property, shall be issued to the Corporation in exchange therefor.

RESOLVED, that at the Effective Time, (i) each 58.30 issued and outstanding shares of Common Stock of the Corporation immediately prior to the Effective Time, shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation (any fractional share resulting from the foregoing conversion shall be rounded up to the next whole share) and (ii) each 29.15 issued and outstanding shares of Series A Convertible Preferred Stock of the Corporation immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation (any fractional share resulting from the foregoing conversion shall be rounded up to the next whole share).

RESOLVED, that from and after the Effective Time, each outstanding certificate thereof representing shares of Common Stock and Series A Convertible Preferred Stock of the Corporation shall be deemed for all purposes to evidence ownership of and to represent the number of shares of Common Stock of the Surviving Corporation calculated in accordance with the foregoing resolution.

RESOLVED, that the Certificate of Incorporation and the By-laws of the Subsidiary in effect immediately prior to the Effective Time shall be the Certificate of Incorporation and the By-laws of the Surviving Corporation.

RESOLVED, that, notwithstanding anything in these resolutions to the contrary and any approval of the Merger by the Corporation's shareholders, the Board may terminate and abandon the Merger at any time prior to the Effective Time, and the Board may amend these resolutions at any time prior to the Effective Time, provided that any such amendment made subsequent to approval of the Merger by the Corporation's shareholders shall not (1) alter or change the amount or kind of shares to be received in exchange for or on conversion of all or any of the shares of any class or series of stock of the Corporation, (2) alter or change the terms of the Certificate of Incorporation of the surviving corporation to be effected by the merger or (3) alter or change any of the terms and conditions of these resolutions if such alteration or change would adversely affect the holders of any class or series of stock of the Corporation.

RESOLVED, that the Merger shall be effective upon the date of filing of a certificate of ownership and merger with the Secretary of State of the State of Delaware in the manner required by law (such date being the "Effective Time").

RESOLVED, that the officers of the Corporation are, and each of them is, hereby authorized and directed for and on behalf of the Corporation to make, sign and acknowledge a certificate of ownership and merger and articles of merger setting forth the foregoing Plan of Merger and such other information as required by law, and to cause such certificate and articles to be filed for record with the Secretaries of State of the State of Delaware and the State of Minnesota, respectively, in each case in the manner required by law.

RESOLVED, that the Plan of Merger be submitted for approval to the shareholders of the Corporation, and in the event that such shareholders shall vote in favor of the Plan of Merger, that the Plan of Merger shall be deemed approved.

[Amendment of Outstanding Options & Warrants]

WHEREAS, the Special Committee desires to adjust outstanding options to purchase Common Stock, issued under the Corporation's 1997 Omnibus Stock Plan (the "Plan"), and outstanding warrants to purchase Common Stock in connection with the Merger.

RESOLVED, that each option agreement relating to outstanding grants under the Plan shall automatically be, without any further action by the Special Committee, amended at the time of the Merger to provide that the number of shares of Common Stock of the Subsidiary subject to each such option shall be divided by 58.30 and the purchase price per share under each such option shall be multiplied by 58.30.

RESOLVED, the number of shares of Common Stock of the Subsidiary available for grants under the Plan shall be increased by the number of shares that are no longer subject to outstanding option grants as a result of the foregoing resolution.

RESOLVED, that each warrant to purchase Common Stock of the Corporation shall automatically be, without any further action by the Special Committee, amended at the time of the Merger to provide that the number of shares of Common Stock of the Subsidiary subject to each such warrant shall be divided by 58.30 and the purchase price per share under each such warrant shall be multiplied by 58.30.