

MRD 6-18-99

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027

06-24-1999



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U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

#### Conveyance Type

- Assignment
- Security Agreement
- Merger
- Change of Name
- Other
- License
- Nunc Pro Tunc Assignment
- Effective Date  
Month Day Year

#### Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other
- Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of conveying parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

#### FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
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**TRADEMARK**  
**REEL: 001917 FRAME: 0541**

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages** Enter the total number of pages of the attached conveyance document including any attachments #

**Trademark Application Number(s) or Registration Number(s)**  Mark if additional numbers attached  
Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2172571"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2172570"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved. #

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed:  Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**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. Charges to deposit account are authorized, as indicated herein.

Name of Person Signing

Signature

Date Signed

# State of California



## SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 15 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

*IN WITNESS WHEREOF*, I execute this certificate and affix the Great Seal of the State of California this day of

JUN 07 1990



*Bill Jones*

Secretary of State

1948597  
RESTATED ARTICLES OF INCORPORATION  
OF  
WET FEET PRESS, INC.

A0519453  
FILED *Bjm*  
In the office of the Secretary of State  
of the State of California

JAN 19 1999

*Bill Jones*  
BILL JONES, Secretary of State

Gary Alpert and Stephen Pollock certify that:

1. They are the President and Secretary, respectively, of Wet Feet Press, Inc., a California corporation (the "*Corporation*").
2. The Articles of Incorporation of this Corporation are amended and restated to read as follows:

**ARTICLE 1. NAME**

The name of the Corporation is WetFeet.com, Inc.

**ARTICLE 2. PURPOSE**

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

**ARTICLE 3. AUTHORIZED CAPITAL**

The Corporation is authorized to issue two classes of shares, designated "Common Stock" and "Preferred Stock" respectively. The total number of shares of Common Stock which this Corporation is authorized to issue is 30,000,000 and the total number of shares of Preferred Stock which this Corporation is authorized to issue is 15,000,000. 1,200,000 of the shares of Preferred Stock are designated "Series A Preferred Stock" (the "*Series A Preferred*") and 1,950,000 of the shares of Preferred Stock are designated "Series B Preferred Stock" (the "*Series B Preferred*"). The remaining Preferred Stock may be issued from time to time in one or more series as the Board of Directors may determine.

The Board of Directors is authorized within the limitations and restrictions stated in these Restated Articles of Incorporation (i) to determine and alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock (other than the Series A Preferred or the Series B Preferred) and the number of shares constituting any such series and the designation thereof, or any of them; and (ii) to decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. If the number of shares of any series of Preferred Stock shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

#### ARTICLE 4. RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS OF CAPITAL STOCK

The Series A Preferred and the Series B Preferred are referred to collectively in this Article 4 as the "Preferred Stock." The relative rights, preferences, privileges, and restrictions granted to or imposed upon the respective classes of the shares of capital stock or the holders thereof are as follows:

*1. Dividend Preference.*

No dividends shall be declared on the Series A Preferred or Series B Preferred unless dividends are declared on both such series of Preferred Stock. In the event dividends are paid to the holders of Series A Preferred and/or Series B Preferred that are less than the full amounts to which both such holders are entitled pursuant to this Section 1, such holders shall share ratably in the total amount of dividends paid according to the respective amounts due each such holder if such dividends were paid in full. After payment of dividends to the holders of Preferred Stock, dividends may be declared and distributed among all holders of Common Stock; provided, however, that no dividend may be declared and distributed among holders of Common Stock at a rate greater than the rate at which dividends are paid to the holders of Preferred Stock based on the number of shares of Common Stock into which such shares of Preferred Stock are convertible (as adjusted for stock splits and the like) on the date such dividend is declared. The dividends payable to the holders of the Preferred Stock shall not be cumulative, and no right shall accrue to the holders of the Preferred Stock by reason of the fact that dividends on the Preferred Stock are not declared or paid in any previous fiscal year of the Corporation, whether or not the earnings of the Corporation in that previous fiscal year were sufficient to pay such dividends in whole or in part. In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Preferred Stock (as provided in Section 4 hereof), the Corporation shall, at the option of the Corporation, pay in cash to the holder(s) of Preferred Stock subject to conversion the full amount of any such dividends or allow such dividends to be converted into Common Stock in accordance with, and pursuant to the terms specified in, Section 4 hereof.

## 2. *Liquidation Preference.*

(a) In the event of any liquidation, dissolution, or winding up of the Corporation, whether voluntary or not, or the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Corporation, or the acquisition of this Corporation by another entity by means of consolidation, corporate reorganizations or merger, or other transaction or series of related transactions in which the holders of outstanding capital stock of this Corporation immediately before such transaction own less than 50% of the outstanding voting power of the surviving or acquiring entity immediately after such transaction (each a "*Liquidation Event*"), distributions to the shareholders of the Corporation shall be made in the following manner:

(i) Each holder of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock, by reason of their ownership of such stock, the amount of (i) \$0.956 (the "*Original Series B Issue Price*") per share (as adjusted for combinations, consolidations, subdivisions, or stock splits with respect to such shares) for each share of Series B Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such shares of Series B Preferred (collectively, the "*Series B Preference*") and (ii) \$0.33 (the "*Original Series A Issue Price*") per share (as adjusted for combinations, consolidations, subdivisions, or stock splits with respect to such shares) for each share of Series A Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such shares of Series A Preferred (collectively, the "*Series A Preference*"). If, upon the occurrence of a Liquidation Event, the assets and funds available to be distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution to such holders shall be distributed ratably based on the total preferential amount due each such holder under this Section 2(a)(i).

(ii) After payment has been made to the holders of Preferred Stock of the full amounts to which they are entitled pursuant to paragraph (i) above, the remaining assets of the Corporation available for distribution to shareholders shall be distributed ratably among the holders of Common Stock and Preferred Stock (assuming conversion of all shares of Preferred Stock); provided however, that (i) the holders of the Series B Preferred shall no longer participate in such distribution after the total amount received by them under Sections 2(a)(ii) and 2(a)(i) of this Article 4 reaches three (3) times the Original Series B Issue Price per share (as adjusted for combinations, consolidations, subdivisions, or stock splits with respect to such shares) for each share of Series B Preferred then held by each such holder (including the Series B Preference) and (ii) the holders of the Series A Preferred shall no longer participate in such distribution after the total amount received by them under Sections 2(a)(ii) and 2(a)(i) of this Article 4 reaches three (3) times the Original Series A Issue Price per share (as adjusted for combinations, consolidations, subdivisions, or stock splits with respect to such shares) for each share of Series A Preferred then held by each such holder (including the Series A Preference). After the holders of the Series A Preferred and the Series B Preferred have received the maximum amounts described in the preceding sentence, the remaining assets of the Corporation

available for distribution to shareholders shall be distributed ratably among the holders of Common Stock based on the number of shares of Common Stock held by each such holder.

(b) Each holder of Preferred Stock shall be deemed to have consented to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by officers, directors, or employees of, or consultants to, the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements (whether now existing or hereafter entered into) providing for the right of said repurchase between the Corporation and such persons if such repurchase was approved by the Board of Directors.

(c) The value of securities and property paid or distributed pursuant to this Section 2 shall be computed at fair market value at the time of payment to the Corporation or at the time made available to shareholders, all as determined by the Board of Directors in the good faith exercise of its reasonable business judgment, provided that (i) if such securities are listed on any established stock exchange or a national market system, their fair market value shall be the closing sales price for such securities as quoted on such system or exchange (or the largest such exchange) for the date the value is to be determined (or if there are no sales for such date, then for the last preceding business day on which there were sales), as reported in the Wall Street Journal or similar publication, and (ii) if such securities are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the high bid and low asked prices for such securities on the date the value is to be determined (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices).

(d) Nothing hereinabove set forth shall affect in any way the right of each holder of Series A Preferred and Series B Preferred to convert such shares at any time and from time to time into Common Stock in accordance with Section 4 hereof.

### 3. *Voting Rights.*

(a) Except as otherwise required by law or hereunder, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the shareholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded to the nearest whole number (with one-half being rounded upward). Holders of Common Stock and Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation.

Best copy available

(b) Notwithstanding the provisions of paragraph (a), at each annual or special meeting called for the purpose of electing directors, the holders of Series B Preferred, voting as a single class, shall be entitled to elect one (1) member of the Board of Directors, the holders of Series A Preferred, voting as a single class, shall be entitled to elect one (1) member of the Board of Directors and the holders of the Common Stock, voting as a single class, shall be entitled to elect the remaining members of the Board of Directors. The provisions of this Section 3(b) shall expire and be of no further force or effect upon conversion of all outstanding shares of Preferred Stock into Common Stock pursuant to the provisions of Section 4 hereof. In the case of any vacancy in the office of a director elected by a specified group of shareholders, a successor shall be elected to hold office for the unexpired term of such director by the affirmative vote of a majority of the shares of such specified group given at a special meeting of such shareholders duly called or by an action by written consent for that purpose. Any director who shall have been elected by a specified group of shareholders may be removed during the aforesaid term of office, either for or without cause, by, and only by, the affirmative vote of the holders of a majority of the shares of such specified group, given at a special meeting of such shareholders duly called or by an action by written consent for that purpose, and any such vacancy thereby created, may be filled by the vote of the holders of a majority of the shares of such specified group represented at such meeting or in such consent.

#### 4. *Conversion Rights.*

The holders of Preferred Stock shall have conversion rights as follows:

(a) *Right to Convert.* Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Preferred Stock as follows:

(i) Each share of Series A Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series A Issue Price by the Series A Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred (the "Series A Conversion Price") shall initially be \$0.33. The initial Series A Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) of this Article 4.

(ii) Each share of Series B Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series B Issue Price by the Series B Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series B Preferred (the "Series B Conversion Price") shall initially be \$0.956. The initial Series B Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) of this Article 4.

(b) *Automatic Conversion.* Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price for such series upon the earlier of: (i) 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, at a price per share of at least \$5.00 (subject to adjustments for stock splits, reverse stock splits, stock dividends and the like), for the account of the Corporation to the public with aggregate proceeds to the Corporation in excess of \$7,500,000 (before deduction for underwriters commissions and expenses) and (ii) with respect to each series of Preferred Stock, the affirmative vote or written consent of a majority of the outstanding shares of such series (each such event is an "Automatic Conversion"). In the event of an Automatic Conversion of such series upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion shall not be deemed to have converted their Preferred Stock until immediately prior to the closing of such sale of securities.

(c) *Mechanics of Conversion.* No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price for such series. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that he or she elects to convert the same; provided, however, that in the event of an Automatic Conversion pursuant to Section 4(b), the outstanding shares of Preferred Stock so converted 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 Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of Automatic Conversion, on the date of closing of the offering or the date of the affirmative vote or written consent of a majority of the then outstanding shares of Series A Preferred or Series B Preferred, as applicable, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) *Adjustments to Conversion Prices.*

(i) *Adjustments for Dividends, Splits, Subdivisions, Combinations, or Consolidation of Common Stock.* In the event the outstanding shares of Common Stock shall be increased by stock dividend payable in Common Stock, stock split, subdivision, or other similar transaction occurring after the filing of these Restated Articles of Incorporation into a greater number of shares of Common Stock, the Conversion Prices then in effect shall, concurrently with the effectiveness of such event, be decreased in proportion to the percentage increase in the outstanding number of shares of Common Stock. In the event the outstanding shares of Common Stock shall be decreased by reverse stock split, combination, consolidation, or other similar transaction occurring after the filing of these Restated Articles of Incorporation into a lesser number of shares of Common Stock, the Conversion Prices then in effect shall, concurrently with the effectiveness of such event, be increased in proportion to the percentage decrease in the outstanding number of shares of Common Stock.

(ii) *Adjustments for Other Distributions.* In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution payable in securities of the Corporation other than shares of Common Stock and other than as otherwise adjusted in this Section 4, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of Preferred Stock.

(iii) *Adjustments for Reclassification, Exchange and Substitution.* If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Prices then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such Preferred Stock immediately before that change.

(iv) *Adjustments on Issuance of Additional Stock.* If the Corporation shall issue "Additional Stock" (as defined below) for a consideration per share less than the Series B Conversion Price in effect on the date and immediately prior to such issue, then and in such event, the Series B Conversion Price shall be reduced concurrently with such issue, to a price (calculated to three decimal places) determined by multiplying such Series B Conversion

Price by a fraction (i) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Stock so issued (or deemed to be issued) would purchase at such Series B Conversion Price; and (ii) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Additional Stock so issued; provided that for purposes of the preceding formula, all shares of Common Stock issuable upon conversion of the outstanding Preferred Stock, all shares of Common Stock issuable upon exercise of outstanding stock options, all shares of Common Stock reserved for issuance under the Corporation's current employee stock option plan, and all shares of Common Stock issuable upon exercise or conversion of any other outstanding security or debt instrument of the Corporation shall be deemed to be Common Stock outstanding. For purposes of this subsection (iv) "Additional Stock" shall mean all Common Stock issued by the Corporation after the date on which the first share of Series B Preferred was issued (the "*Series B Original Issue Date*") other than Common Stock issued or issuable (a) upon conversion of the Preferred Stock; (b) to officers, directors, and employees of, and consultants to, the Corporation in connection with rendering services to the Corporation that are approved by the Board of Directors in an amount not to exceed 450,000 shares in the aggregate (or such greater number that is unanimously approved by the Board of Directors); (c) as a dividend or distribution with respect to the Preferred Stock; (d) in connection with equipment leasing or bank financing transactions approved by the Corporation's Board of Directors; or (e) as described in subparagraphs (i), (ii), and (iii) of this Section 4(d).

For the purpose of making any adjustment in the Series B Conversion Price as provided above, the consideration received by the Corporation for any issue or sale of Common Stock will be computed:

(1) to the extent it consists of cash, as the amount of cash received by the Corporation before deduction of any offering expenses payable by the Corporation and any underwriting or similar commissions, compensation, or concessions paid or allowed by the Corporation in connection with such issue or sale;

(2) to the extent it consists of property other than cash, at the fair market value of that property as determined in good faith by the Corporation's Board of Directors; and

(3) if Common Stock is issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Common Stock.

If the Corporation (1) grants any rights or options to subscribe for, purchase, or otherwise acquire shares of Common Stock, or (2) issues or sells any security convertible into shares of Common Stock, then, in each case, the price per share of Common Stock issuable on the exercise of the rights or options or the conversion of the securities will be determined by dividing the total amount, if any, received or receivable by the Corporation as

consideration for the granting of the rights or options or the issue or sale of the convertible securities, plus the minimum aggregate amount of additional consideration payable to the Corporation on exercise or conversion of the securities, by the maximum number of shares of Common Stock issuable on the exercise or conversion. Such granting or issue or sale will be considered to be an issue or sale for cash of the maximum number of shares of Common Stock issuable on exercise or conversion at the price per share determined under this subsection, and the Series B Conversion Price will be adjusted as above provided to reflect (on the basis of that determination) the issue or sale. No further adjustment of such Series B Conversion Price will be made as a result of the actual issuance of shares of Common Stock on the exercise of any such rights or options or the conversion of any such convertible securities.

Upon the redemption or repurchase of any such securities or the expiration or termination of the right to convert into, exchange for, or exercise with respect to, Common Stock, the Series B Conversion Price will be readjusted to such price as would have been obtained had the adjustment made upon their issuance been made upon the basis of the issuance of only the number of such securities as were actually converted into, exchanged for, or exercised with respect to, Common Stock. If the purchase price or conversion or exchange rate provided for in any such security changes at any time, then, upon such change becoming effective, the Series B Conversion Price then in effect will be readjusted forthwith to such price as would have been obtained had the adjustment made upon the issuance of such securities been made upon the basis of (1) the issuance of only the number of shares of Common Stock theretofore actually delivered upon the conversion, exchange or exercise of such securities, and the total consideration received therefor, and (2) the granting or issuance, at the time of such change, of any such securities then still outstanding for the consideration, if any, received by the Corporation therefor and to be received on the basis of such changed price or rate.

(e) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Conversion Prices pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price for such series of Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such Preferred Stock.

(f) *Notices of Record Date.* In the event that this Corporation shall propose at any time:

(i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock, or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus:

(ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iv) to merge or consolidate with or into any other corporation, or sell, lease, or convey all or substantially all its property or business, or to liquidate, dissolve, or wind up; then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock:

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

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

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of the Preferred Stock at the address for each such holder as shown on the books of this Corporation.

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

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

(i) **Status of Converted Stock.** In case any series of Preferred Stock shall be converted pursuant to this Section 4, the shares so converted shall resume the status of authorized but unissued shares of Preferred Stock undesignated as to series.

**5. Redemption Rights.**

(a) **Series A Preferred.** The Series A Preferred shall not be redeemable.

(b) **Series B Preferred.** The Corporation shall redeem, on the terms and conditions stated herein, to the extent that it has funds legally available therefor, all of the Series B Preferred in three annual installments beginning on the sixth anniversary of the Series B Original Issue Date (the "**Initial Redemption Date**"), and continuing thereafter on the first and second anniversaries of the Initial Redemption Date (each a "**Series B Redemption Date**"), by paying in cash therefor a sum equal to the Original Series B Issue Price for each share of Series B Preferred, plus all declared but unpaid dividends thereon (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), plus an additional amount equal to 12% of the Original Series B Issue Price (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) compounded per annum from the Series B Original Issue Date to the applicable Series B Redemption Date (the "**Series B Redemption Price**"). Subject to having funds legally available therefor, the number of shares of Series B Preferred that the Corporation shall be required to redeem under this paragraph (b) on any one Series B Redemption Date shall be equal to the amount determined by dividing (x) the aggregate number of shares of Series B Preferred outstanding immediately prior to the Series B Redemption Date by (y) the number of remaining Series B Redemption Dates (including the Series B Redemption Date to which such calculation applies).

(c) In the event that the Corporation is unable to redeem the full number of shares of Series B Preferred to be redeemed on any Series B Redemption Date, the shares not redeemed shall be redeemed by this Corporation as provided in this Section 5 as soon as practicable after funds are legally available therefor. Any redemption effected pursuant to this paragraph (c) shall be made ratably among the holders of the Series B Preferred.

(d) If the Series B Preferred shall be redeemed as provided in paragraphs (a) and (b) above, then at least 30 but no more than 60 days prior to each Series B Redemption Date, the Corporation shall give written notice by certified or registered mail, postage prepaid, to all holders of outstanding Series B Preferred whose shares are being redeemed, at the address last shown on the records of the Corporation for such holder, stating such Series B Redemption Date, the Series B Redemption Price, as applicable, the then applicable conversion rate (as provided in Section 4(a)) for such shares, and the date of termination of the right to convert (which date shall not be earlier than 30 days after the written notice by the Corporation has been given) and shall call upon such holder to surrender to the Corporation on such Series B Redemption Date at the place designated in the notice such holder's certificate or certificates representing the shares to be redeemed. On or after the Series B Redemption Date stated in such notice, the holder of each share of Series B Preferred called for redemption shall surrender the certificate evidencing such shares to the Corporation at the place designated in such notice and shall thereupon be entitled to

receive payment of the Series B Redemption Price, for the shares surrendered. If less than all the shares represented by any such surrendered certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. If such notice of redemption shall have been duly given, and if on such Series B Redemption Date funds necessary for the redemption shall be available therefor, then, as to any certificates evidencing any Series B Preferred so called for redemption and not surrendered, all rights of the holders of such shares so called for redemption and not surrendered shall cease with respect to such shares, except only the right of the holders to receive the Series B Redemption Price for the Series B Preferred which they hold, without interest, upon surrender of their certificates therefor.

(c) Notwithstanding anything herein to the contrary, if, on or prior to any Series B Redemption Date (and after a redemption election has been made pursuant to this Section 5), the Corporation deposits, with any bank or trust company in the State of California having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, a sum sufficient to redeem on such Series B Redemption Date the shares called for redemption, with irrevocable instructions and authority to the bank or trust company to give the notice of redemption thereof (or to complete the giving of such notice if theretofore commenced) and to pay, on or after the Series B Redemption Date or prior thereto, the Series B Redemption Price of the shares to their respective holders upon the surrender of their share certificates, then from and after the date of the deposit (although prior to such Series B Redemption Date), the shares so called for redemption on such Series B Redemption Date (but not any subsequent Series B Redemption Date) shall be redeemed. The deposit of such sum shall constitute full payment of such shares to their holders and from and after the date of the deposit such shares shall no longer be outstanding, and the holders thereof shall cease to be shareholders with respect to such shares, and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the Series B Redemption Price for the Series B Preferred called for redemption on such Series B Redemption Date without interest, upon the surrender of their certificates therefor and the right to convert said shares as provided herein at any time up to but not after the close of business on the fifth day prior to the Series B Redemption Date of such shares (which conversion date will not be earlier than 30 days after the written notice of redemption has been given). Any monies so deposited on account of the Series B Redemption Price of the Series B Preferred converted into Common Stock subsequent to the making of such deposit shall be repaid to the Corporation forthwith upon the conversion of such Series B Preferred. Any interest accrued on any funds so deposited shall be the property of, and paid to, the Corporation. If the holders of Series B Preferred so called for redemption shall not, at the end of two years after the applicable Series B Redemption Date, have claimed any funds so deposited, such bank or trust company shall thereupon pay over to the Corporation such unclaimed funds, and such bank or trust company shall thereafter be relieved of all responsibility in respect thereof to such holders and such holders shall look only to the Corporation for payment of the Series B Redemption Price for the Preferred Stock which they hold

6. *Covenants.*

In addition to any other rights provided by law, this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of the Preferred Stock, voting as a single class on as-converted basis:

(a) amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws if such action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any series of Preferred Stock;

(b) engage in any transaction or series of related transactions constituting a Liquidation Event;

(c) increase or decrease the aggregate number of authorized shares of any series of Preferred Stock, other than an increase as provided in either subdivision (b) of Section 405 or subdivision (c) of Section 902;

(d) effect an exchange, reclassification, or cancellation of all or part of any series of Preferred Stock, including a reverse stock split but excluding a stock split;

(e) effect an exchange, or create a right of exchange, of all or a portion of any series of Preferred Stock;

(f) change the rights, preferences, privileges or restrictions of any series of Preferred Stock;

(g) create a new class of shares having rights, preferences or privileges prior to the Series A Preferred or Series B Preferred, or increase the rights, preferences or privileges or the number of authorized shares of any class having rights, preferences or privileges prior to the shares of any series of Preferred Stock;

(h) increase the size of the Board of Directors of the Corporation to greater than five (5) members; or

(i) cancel or otherwise affect dividends on the Preferred Stock which have accrued but have not been paid.

Notwithstanding any other provision of these Restated Articles of Incorporation, this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of the Series B Preferred, sell material assets of this Corporation, redeem stock (other than the Series B Preferred or as contemplated in Section 2(b) of Article 4 hereof), or make (i) any acquisition valued in excess of \$1,000,000 or (ii) any acquisition or disposition of stock or assets that constitutes a Liquidation Event.



7. ***Residual Rights.***

All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock or such other series of Preferred Stock as may be designated from time to time by the Board of Directors of the Corporation in accordance with these Restated Articles of Incorporation and California law. The Common Stock shall not be redeemable.

**ARTICLE 5. LIMITATION OF DIRECTORS' LIABILITY  
AND INDEMNIFICATION OF AGENTS**

The liability of the directors of this Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. This Corporation is also authorized, to the fullest extent permissible under California law, to indemnify its agents (as defined in Section 317 of the California Corporations Code), whether by bylaw, agreement or otherwise, for breach of duty to this Corporation and its shareholders in excess of that expressly permitted by Section 317 and to advance defense expenses to its agents in connection with such matters as they are incurred, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code. If, after the effective date of this Article, California law is amended in a manner which permits a corporation to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

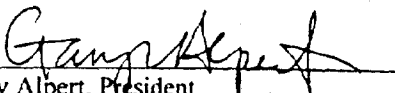
3. The foregoing Restated Articles of Incorporation have been duly approved by the Board of Directors.

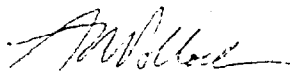
4. The foregoing Restated Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Section 902 of the Code. The Corporation has two classes of stock outstanding. The total number of outstanding shares of Common Stock of this Corporation is 4,200,000 and the total number of outstanding shares of Series A Preferred Stock of the Corporation is 1,050,000. The number of shares voting in favor of the amendment and restatement equaled or exceeded the vote required, such required vote being (i) more than

50% of the outstanding shares of Series A Preferred voting as a separate class and (ii) more than 50% of the outstanding shares of Common Stock voting as a separate class.

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

Date: January 11, 1999

  
Gary Alpert, President

  
Stephen Pollock, Secretary

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