

01-06-2000

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MRD 12-8-99

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TO: The Commissioner of Patents and Trademarks

Original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
- Correction of PTO Error
- Corrective Document

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OPR/FINANCE

Conveyance Type

- Assignment
- Security Agreement
- Merger
- License
- Nunc Pro Tunc Assignment
- Change of Name
- Other

Effective Date
Month Day Year
11 / 01 / 1991

Conveying Party

Mark if additional names of conveying parties attached

Name **Macromind, Inc. (California); Paracomp, Inc. (California)**

Execution Date
Month Day Year

11 / 01 / 1991

Formerly

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other
- Citizenship/State Of Incorporation/Organization **Please see above**

Receiving Party

Mark If Additional Names Of Receiving Parties Attached

Name **Macromind-Paracomp, Inc.**

Db/a/Aka/Ta

Composed Of

Address (Line 1)

600 Townsend, Suite 310

Address (Line 2)

Address (Line 3)

San Francisco

California

94103

City

State/Country

Zip Code

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

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:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

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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).

Trade Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2043911"/>	<input type="text"/>	<input type="text"/>
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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:

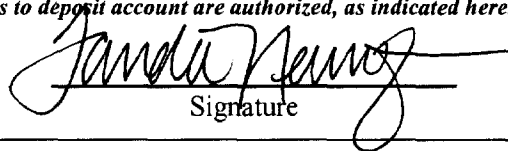
Yes No

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.

Tanda L. Neundorf, Esq.

Name of Person Signing



Signature

December 8, 1999

Date Signed

ENDORSED
FILED
In the Office of the Secretary of State
of the State of California

AGREEMENT OF MERGER

OF

NOV 1 1991

MACROMIND, INC. AND PARACOMP, INC.

MARCHFONGEEL Secretary of State

This Agreement of Merger, dated as of the first day of November, 1991 ("Merger Agreement"), by and between MacroMind, Inc., a California corporation ("MacroMind") and Paracomp, Inc., a California corporation ("Paracomp").

RECITALS

WHEREAS, the Boards of Directors of MacroMind and Paracomp have each duly approved and adopted this Agreement of Merger (this "Agreement"), the Agreement and Plan of Reorganization dated as of August 21, 1991 (the "Reorganization Agreement") among MacroMind, Paracomp and certain shareholders of Paracomp (the "Shareholder Representatives") and the proposed merger of Paracomp with and into MacroMind in accordance with this Agreement, the Reorganization Agreement and the California General Corporation Law (the "California Statute"), whereby, among other things, the issued and outstanding shares of Common Stock of Paracomp and the issued and outstanding shares of Preferred Stock of Paracomp (other than shares held by Dissenting Shareholders) will be changed and converted into shares of Common Stock, par value \$0.001 per share, and Preferred Stock, par value \$0.001 per share, respectively, of MacroMind, and outstanding warrants and options to purchase Common Stock of Paracomp will be assumed by MacroMind in the manner set forth in Article 2 hereof and in the Reorganization Agreement, upon the terms and subject to the conditions set forth in this Agreement and the Reorganization Agreement. Capitalized terms used herein and not otherwise defined are used as defined in the Reorganization Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement and the Reorganization Agreement, the parties hereto agree as follows:

ARTICLE 1

GENERAL

1.1 The Merger. In accordance with the provisions of this Agreement, the Reorganization Agreement and the California

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Statute, Paracomp shall be merged with and into MacroMind (the "Merger"), which at and after the Effective Time shall be, and is sometimes referred to as, the "Surviving Corporation". Paracomp and MacroMind are sometimes referred to as the "Constituent Corporations."

1.2 The Effective Time of the Merger. The Merger shall become effective upon the filing of this Agreement and the officers' certificate of each Constituent Corporation with the Secretary of State of the State of California, in the manner provided under the California Statute. The date and time when the Merger shall become effective are referred to herein as the "Effective Time".

1.3 Effect of Merger. Except as specifically set forth herein or in the Reorganization Agreement, at the Effective Time, the separate existence of Paracomp shall cease, and the Surviving Corporation, without any other act or transfer, shall succeed to all the rights and property of Paracomp and shall be subject to all the debts and liabilities thereof to the same effect as if the Surviving Corporation had itself incurred them; but all rights of creditors and all liens upon the property of each Constituent Corporation shall be preserved unimpaired, provided that such liens upon property of a Constituent Corporation shall be limited to the property affected thereby immediately prior to the Effective Time; and any action or proceeding pending by or against any Constituent Corporation may be prosecuted to judgment, which shall bind the Surviving Corporation, or the Surviving Corporation may be proceeded against or substituted in its place.

1.4 Articles of Incorporation and By-Laws of Surviving Corporation. From and after the Effective Time, (i) the Articles of Incorporation of the Surviving Company shall be the Restated Articles of Incorporation of MacroMind as set forth on Exhibit 1 attached hereto, unless and until altered, amended or repealed as provided in the California Statute, (ii) the Bylaws of the Surviving Corporation shall be the Bylaws of MacroMind, unless and until altered, amended or repealed as provided in the California Statute, the Articles of Incorporation of MacroMind or such Bylaws and (iii) the officers and directors of MacroMind shall be the officers and directors of the Surviving Corporation, respectively, unless and until removed, or until their respective terms of office shall have expired, in accordance with the Reorganization Agreement, the California Statute, the Articles of Incorporation and the Bylaws of the Surviving Corporation, as applicable.

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1.5 Name. From and after the Effective Time, the name of the Surviving Corporation shall be MacroMind/Paracomp, Inc.

ARTICLE 2

EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES

2.1 Effect on Capital Stock. At the Effective Time, subject and pursuant to the terms and conditions of this Agreement and the Reorganization Agreement, by virtue of the Merger and without any action on the part of the Constituent Corporations or the holders of the capital stock of the Constituent Corporations:

(a) Cancellation of Certain Shares of Paracomp Capital Stock. Each share of Paracomp Stock that is owned by any subsidiary of Paracomp shall be canceled and no MacroMind Capital Stock or other consideration shall be delivered in exchange therefor. As used in this Agreement, a "subsidiary" of any corporation means another corporation an amount of whose voting securities sufficient to elect at least a majority of its Board of Directors is owned directly or indirectly by such corporation.

(b) Exchange of Paracomp Capital Stock. Subject to Section 2.2, shares of Paracomp Capital Stock shall be exchanged and converted into shares of MacroMind Capital Stock on the following basis:

(i) In accordance with Section 2.2(b), each share of Paracomp Common Stock issued and outstanding at the Effective Time (other than shares cancelled pursuant to Section 2.1(a) and shares held by Dissenting Shareholders, if any) shall be exchanged and converted into a fraction of a share of MacroMind Common Stock determined as provided in Section 2.1(c); and

(ii) In accordance with the provisions of Section 2.2(b), each share of Paracomp Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock issued and outstanding at the Effective Time (other than shares cancelled pursuant to Section 2.1(a) and shares held by Dissenting Shareholders, if any), including all accrued and unpaid dividends thereon, shall be exchanged and converted into a fraction of a share of Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock of MacroMind, respectively, determined as provided in Section 2.1(c).

(c) Exchange Ratio. The fraction of a share of MacroMind Capital Stock into which each share of Paracomp Capital Stock shall be converted shall be computed by dividing (x) the

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product of (A) the number of shares of MacroMind Common Stock (including Common Stock issuable upon exercise of options, warrants or other rights to purchase MacroMind Common Stock outstanding at the Effective Time) and MacroMind Preferred Stock (including Preferred Stock issuable upon exercise of options, warrants, or other rights to purchase MacroMind Preferred Stock outstanding at the Effective Time) outstanding immediately prior to the Effective Time multiplied by (B) .5625, by (y) the number of shares of Paracomp Common Stock (including Common Stock issuable upon exercise of Paracomp Warrants and Paracomp Options) and Paracomp Preferred Stock (including Preferred Stock issuable upon exercise of options, warrants or other rights to purchase Paracomp Preferred Stock) outstanding immediately prior to the Effective Time.

(d) Assumption of Paracomp Options; Assumption of Paracomp Warrants; Reallocation of Certain Shares.

(i) As provided in the Stock Option Assumption Agreements to be entered into pursuant to Section 1.7(b) of the Reorganization Agreement, each issued and outstanding Paracomp Option shall be assumed by MacroMind, shall remain subject to its existing vesting provisions, and shall be exercisable for MacroMind Common Stock at the same ratio as is set forth in Section 2.1(c) above for the conversion of Paracomp Common Stock into MacroMind Common Stock, rounded up to the nearest whole number of shares of MacroMind Common Stock with a proportional adjustment of the exercise price with the per share purchase price rounded up to the nearest whole cent so that the aggregate exercise price under the assumed option shall remain substantially unchanged, all as adjusted pursuant to the terms of such Stock Option Assumption Agreements.

(ii) As provided in the Common Stock Warrant Assumption Agreements, each issued and outstanding Paracomp Warrant shall be assumed by MacroMind, shall remain subject to its existing provisions, and shall be exercisable for MacroMind Common Stock at the same ratio as is set forth in Section 2.1(c) above for the conversion of Paracomp Common Stock into MacroMind Common Stock, rounded up to the nearest whole number of shares of MacroMind Common Stock with a proportional adjustment of the exercise price with the per share purchase price rounded up to the nearest whole cent so that the aggregate exercise price under the assumed warrant shall remain substantially unchanged, all as adjusted pursuant to the terms of such Common Stock Warrant Agreements.

(e) **Shares of Dissenting Shareholders.** Each issued and outstanding share of Paracomp Capital Stock held by a Dissenting Shareholder, if any, shall not be changed and converted as described in Section 2.1(b) but shall become the right to receive such consideration as may be determined to be due to such Dissenting Shareholder pursuant to Chapter 13 of the

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California Statute; provided, however, that each share of Paracomp Capital Stock issued and outstanding at the Effective Time and held by a Dissenting Shareholder who shall, after the Effective Time, withdraw his demand for appraisal or lose or fail to perfect his right of appraisal as provided in the California Statute shall be changed and converted, as of the Effective Time, as provided in Section 2.1(b), without interest. After the Effective Time, as provided in the California Statute, no Dissenting Shareholder will be entitled to vote the shares of Paracomp Capital Stock subject to such Dissenting Shareholder's demand for appraisal for any purpose or be entitled to the payment of dividends or other distributions on such shares.

(f) Authorized But Unissued Shares of the Company. Each authorized but unissued share of capital stock of Paracomp at the Effective Time shall be cancelled and no MacroMind Capital Stock or other consideration shall be delivered in exchange therefor.

2.2 Exchange of Certificates.

(a) Procedure for Exchanges; Rounding. Within fifteen (15) business days after the Effective Time, MacroMind shall mail to each holder of record of a certificate or certificates which immediately prior to the Effective Time represented issued and outstanding shares of Paracomp Capital Stock (each, an "Old Certificate"), other than the Company or any subsidiary of the Company, (i) a letter of transmittal, which shall specify that delivery shall be effected, and risk of loss and title to the Old Certificates shall pass, only upon delivery of such Old Certificates to MacroMind and shall be in such form and have such other provisions as MacroMind may reasonably specify, and (ii) instructions for effecting the surrender of the Old Certificates in exchange for certificates representing MacroMind Capital Stock (each, a "New Certificate"). Upon surrender of an Old Certificate for cancellation to MacroMind, together with a duly executed letter of transmittal and such other documents as may be reasonably required by MacroMind, the holder of such Old Certificate shall be entitled to receive in exchange therefor a New Certificate representing that number of whole shares of MacroMind Capital Stock which such holder has the right to receive pursuant to Sections 2.1(b)(i) and 2.1(b)(ii), rounded upwards to the nearest whole number of shares on a holder-per-holder basis (less the number of shares of MacroMind Capital Stock held in escrow pursuant to the Reorganization Agreement and the Escrow Agreement attached thereto as Exhibit 1.7(a)), and the Old Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of shares of Paracomp Capital Stock which is not registered on the transfer records of Paracomp, a New Certificate representing the proper number of shares of MacroMind Capital Stock may be issued to a

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transferee if the Old Certificate representing such Paracomp Capital Stock is presented to MacroMind, accompanied by all documents required to evidence and effect such transfer and by evidence that any applicable stock transfer taxes have been paid. Until surrendered as contemplated by this Section 2.2 and the Reorganization Agreement, each Old Certificate shall be deemed, on and after the Effective Time, to represent only the right to receive upon such surrender New Certificates representing shares of MacroMind Capital Stock as contemplated by Sections 2.1(b)(i) and 2.1(b)(ii), (less the number of shares of MacroMind Capital Stock held in escrow pursuant to the Reorganization Agreement and the Escrow Agreement attached thereto as Exhibit 1.7(a)), without interest.

(b) No Further Ownership Rights in Paracomp Stock. All shares of MacroMind Capital Stock issued upon the surrender for exchange of shares of Paracomp Capital Stock in accordance with the terms of this Article 2 and the Reorganization Agreement shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Paracomp Capital Stock. If, after the Effective Time, any Old Certificate is presented to the Surviving Corporation for any reason, such Old Certificate shall be canceled and exchanged as provided in this Article 2 and the Reorganization Agreement.

(c) No Liability. Neither MacroMind nor Paracomp shall be liable to any holder of shares of Paracomp Capital Stock or MacroMind Capital Stock, as the case may be, for shares (or dividends or distributions with respect thereto) of MacroMind Capital Stock to be issued in exchange for Paracomp Capital Stock pursuant to this Section 2.2, if, on or after the expiration of six months following the Effective Date, such shares are delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

2.3 Dissenting Shareholders. Prior to the Closing, Paracomp shall give MacroMind (a) prompt notice of any demand by shareholders of Paracomp (the "Dissenting Shareholders") for purchase of their shares of Paracomp Capital Stock at fair value in the manner provided by Chapter 13 of the California Statute and (b) the opportunity to participate in all negotiations and proceedings with respect to any such demands. Prior to the Closing, Paracomp shall not, except with the prior written consent of MacroMind, voluntarily make any payment with respect to, or settle or offer to settle, any such demands for payment.

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ARTICLE 3

TERMINATION

This Agreement shall be terminated, and the Merger abandoned, notwithstanding the approval by MacroMind and Paracomp of this Agreement and the Merger, in the event of and simultaneously with a termination of the Reorganization Agreement in accordance with and as provided in Article 7 thereof.

ARTICLE 4

**APPROVAL OF AGREEMENT;
FILING THEREOF**

The respective Boards of Directors of each of the Constituent Corporations have, by resolutions duly adopted, unanimously approved and adopted the Merger, this Agreement and the Reorganization Agreement. The respective shareholders of each of the Constituent Corporations have, by resolutions duly adopted, approved and adopted the Merger, this Agreement and the Reorganization Agreement in accordance with the California Statute. Upon satisfaction of all conditions of the Merger contained in Article 5 of the Reorganization Agreement (or appropriate waiver thereof by the party or parties entitled to satisfaction of such conditions or any of them), but subject to the provisions of Article 3 hereof, the parties hereto shall cause this Agreement to be delivered to and filed with the Secretary of the State of the State of California in accordance with Section 1103 of the California Statute and the Merger shall thereupon become effective.

ARTICLE 5

MISCELLANEOUS

5.1 Entire Agreement; Amendments. This Agreement and the Reorganization Agreement and the other writings and agreements referred to herein or therein or delivered pursuant thereto contain the entire understanding of the parties with respect to its subject matter. This Agreement and the Reorganization Agreement and such other writings and agreements referred to therein supersede all prior agreements and understandings between the parties with respect to their subject matter. This Agreement may be amended only by a written instrument duly executed by the parties, and any condition to a party's obligations hereunder may only be waived in writing by such party.

5.2 Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and

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shall not affect in any way the meaning or interpretation of this Agreement.

5.3 Notices. All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered personally or sent by air courier or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(i) If to MacroMind:

MacroMind, Inc.
410 Townsend Street, Suite 408
San Francisco, California 94107
Attention: Mr. Timothy Mott

Facsimile: (415) 442-0190

With a copy to:

Scott C. Dettmer, Esq.
Brobeck, Phleger & Harrison
Two Embarcadero Place
2200 Geng Road
Palo Alto, California 94303
Facsimile: (415) 496-2885

(ii) If to Paracomp:

Paracomp, Inc.
1725 Montgomery Street, 2nd Floor
San Francisco, California 94111
Attention: William R. Woodward
Facsimile: (415) 956-9525

With a copy to:

James M. Koshland, Esq.
Ware & Freidenrich
400 Hamilton Avenue
Palo Alto, California 94301
Facsimile: (415) 327-3699

or to such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such notice or communication shall be deemed to have been received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of air courier, on the next business day after the date when sent and (c) in the case of mailing, on the third business day following

the date on which the piece of mail containing such communication was posted.

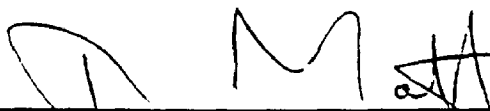
5.4 Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart shall be an original instrument, and all such counterparts together shall constitute one agreement.


5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the California Statute.

5.6 Parties in Interest. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns. Anything contained herein to the contrary notwithstanding, this Agreement shall not be assigned by any party hereto without the consent of the other parties hereto.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf as of the day and year first above written.

MACROMIND, INC.

By: 
Timothy Mott, President

By: 
Richard B. Wood, Secretary

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PARACOMP, INC.

By: William R. Woodward
William R. Woodward, President

By: William R. Woodward
William R. Woodward, Secretary

RESTATED ARTICLES OF INCORPORATION
 MACROMIND/PARACOMP, INC.
 a California Corporation

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ARTICLE I

The name of this corporation is MacroMind/Paracomp,
 Inc.

ARTICLE II

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

ARTICLE III

A. Classes of Stock. This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that this corporation is authorized to issue is Sixty Million (60,000,000) shares. Forty Million (40,000,000) shares shall be Common Stock, par value \$0.001 per share, and Twenty Million (20,000,000) shares shall be Preferred Stock, par value \$0.001 per share.

B. Rights, Preferences, and Restrictions of Preferred Stock. The Preferred Stock authorized by these Restated Articles of Incorporation may be issued from time to time in series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series B Preferred Stock, which series shall consist of 255,320 shares ("Series B Preferred Stock"), the Series C Preferred Stock, which series shall consist of 2,634,640 shares ("Series C Preferred Stock"), the Series C1 Preferred Stock, which series shall consist of 2,634,640 shares ("Series C1 Preferred Stock"), the Series D Preferred Stock, which series shall consist of 3,293,413 shares ("Series D Preferred Stock"), the Series E Preferred Stock which series shall consist of 150,000 shares ("Series E Preferred Stock"), the Series F Preferred Stock, which series shall consist of 620,000 shares ("Series F Preferred Stock"), and the Series G Preferred Stock, which series shall consist of 3,250,000 shares ("Series G Preferred Stock"), are as set forth below in this Article III(B). Except as specifically set forth in Subsections 4(c)(i) and 4(c)(ii), and Section 9 of this Article III, the rights, preferences, privileges, and restrictions granted to or imposed

on the Series C1 Preferred Stock, or the holders thereof, shall be identical to those granted to the Series C Preferred Stock, or to the holders thereof, and each reference to the Series C Preferred Stock shall be deemed a reference to the Series C1 Preferred Stock. The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges, and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series, and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or series thereof in Certificates of Determination or this corporation's Articles of Incorporation ("Protective Provisions"), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences, and restrictions of any such additional series may be subordinated to, made pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, and/or approval of matters by vote or written consent), or made senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock), prior or subsequent to the issuance of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

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1. Dividend Provisions. Subject to the rights of series of Preferred Stock that may from time to time come into existence, any dividends of cash, stock, or other property declared shall be distributed among all holders of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, and Common Stock, when, as, and if declared by the Board of Directors of this corporation out of the assets of this corporation that are legally available therefor, in proportion to the number of shares of Common Stock which would be held by each holder if all shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock were converted into Common Stock at the then effective conversion prices (as defined in Section 4 hereof). Dividends on the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock provided for herein shall be payable in full prior and in preference to the payment of

dividends on the Common Stock. Unless the Board of Directors has declared but not paid such dividends, the right to receive such dividends on the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock shall not be cumulative, and no right shall accrue to holders of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock by reason of the fact that dividends on such shares were not declared or paid in any prior years.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution, or winding up of this corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence, the holders of Series D Preferred Stock and Series G Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Common Stock, by reason of their ownership thereof, an amount per share equal to \$1.67 for each outstanding share of Series D Preferred Stock (as presently constituted) and an amount per share equal to \$1.07 for each outstanding share of Series G Preferred Stock (as presently constituted), plus an amount equal to declared but unpaid dividends on each such share. If upon the occurrence of such event, the assets and funds thus distributed among the holders of Series D Preferred Stock and Series G Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of Series D Preferred Stock and Series G Preferred Stock in proportion to the aggregate preferential amounts owed to each such holder.

(b) Upon the completion of the distribution required by subsection (a) of this Section 2, and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, if assets remain in this corporation, the holders of Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to (i) \$1.175 for each outstanding share of Series B Preferred Stock (as presently constituted), (ii) \$1.12 for each outstanding share of Series C Preferred Stock (as presently constituted), (iii) \$0.86 for each

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outstanding share of Series E Preferred Stock (as presently constituted), and (iv) \$2.11 for each outstanding share of Series F Preferred Stock (as presently constituted), plus, for each such series of Preferred Stock, an amount equal to declared but unpaid dividends on each such share. If upon the occurrence of such event, the assets and funds thus distributed among the holders of Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock in proportion to the aggregate preferential amounts owed to each such holder.

(c) Upon the completion of the distributions required by Subsections (a) and (b) of this Section 2, and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, if assets remain in this corporation, the holders of the Common Stock of this corporation shall receive all of the remaining assets of this corporation.

(d) A consolidation or merger of this corporation with or into any other corporation or corporations (other than the merger of this corporation into a wholly-owned subsidiary of this corporation), or the merger of any other corporation or corporations into this corporation (unless the shareholders of this corporation hold more than a majority of the voting equity securities of the surviving corporation), or a sale, conveyance, or disposition of all or substantially all of the assets of this corporation, shall be deemed to be a liquidation, dissolution, or winding up within the meaning of this Section 2. The transactions described in this Subsection 2(d) are sometimes referred to herein as a "Sale of the Corporation."

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3. Redemption. The Preferred Stock is not redeemable.

4. Conversion. The holders of Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert.

(i) Subject to subsection 4(c) hereof, each share of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G 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 this corporation or of any transfer agent for the applicable series of Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.637 in the case of Series B Preferred Stock, \$1.12 in the case of Series C Preferred Stock, \$1.67 in the case of Series D Preferred Stock, \$0.86 in the case of Series E Preferred Stock, \$2.11 in the case of the Series F Preferred Stock, and \$1.07 in the case of the Series G Preferred Stock, by the Conversion Price at that time in effect for such share. The initial per share Conversion Price for shares of Series B Preferred Stock shall be \$0.637, the initial per share Conversion Price for shares of Series C Preferred Stock shall be \$1.12, the initial per share Conversion Price for shares of Series D Preferred Stock shall be \$1.67, the initial per share Conversion Price for shares of Series E Preferred Stock shall be \$0.86, the initial per share Conversion Price for shares of Series F Preferred Stock shall be \$2.11, and the initial per share Conversion Price for shares of Series G Preferred Stock shall be \$1.07; provided, however, that the Conversion Prices for Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock shall be subject to adjustment as set forth in subsection 4(c) hereof.

(ii) Each share of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such series of Preferred Stock immediately upon the closing of a firmly underwritten public offering covering primary sales of Common Stock of this corporation in which the gross proceeds to this corporation are at least \$7,500,000 (after deduction of underwriter commissions and expenses), and in which the per share public offering price of this corporation's Common Stock is at least \$2.51 (adjusted to reflect subsequent stock dividends, stock splits, or recapitalizations).

(iii) (A) If at any time (a) a holder of shares of Series G Preferred Stock is entitled to exercise the right of first offer (the "Right of First Offer") set forth in Section 2.5 of the Amended and Restated Investor Rights Agreement dated as of November 1, 1991 (the "Investor Rights Agreement") (copies of which are on file at this corporation and are available without charge to shareholders of this corporation upon written request to the Secretary of this corporation), with respect to an equity financing of the corporation at a price per share of capital stock of the corporation being offered and sold in such financing which is less than the applicable Conversion Price then in effect for the Series G Preferred Stock (an "Equity Financing"), (b) the corporation has complied with its obligations under the Right of First Offer with respect to such Equity Financing, and (c) such

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holder (a "Non-Participating Holder") does not acquire his or its Proportionate Percentage (as defined in Section 2.5 of the Investor Rights Agreement) of the Shares (as defined in Section 2.5 of the Investor Rights Agreement) offered in such Equity Financing (a "Mandatory Offering"), then all of the shares of Series G Preferred Stock held by such Non-Participating Holder shall automatically and without further action on the part of such holder be converted at the Conversion Price at the time in effect for shares of Series G Preferred Stock into fully paid and nonassessable shares of Common Stock effective upon (but subject to) and concurrently with, the consummation of the Mandatory Offering (the "Mandatory Offering Date").

Upon conversion pursuant to this subsection 4(a)(iii), the shares of Series G Preferred Stock so converted shall be cancelled and not subject to reissuance.

(B) The holder of any shares of Series G Preferred Stock converted pursuant to this subsection 4(a)(iii) shall promptly deliver to the corporation during regular business hours at the office of any transfer agent of the corporation for the Series G Preferred Stock, or at such other place as may be designated by the corporation, the certificate or certificates for the shares so converted, duly endorsed or assigned in blank or to the corporation. As promptly as practicable thereafter, the corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of the Series G Preferred Stock to be issued and such holder shall be deemed to have become a shareholder of record on the Mandatory Offering Date.

(b) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the applicable series of Preferred Stock, and shall give written notice by mail, postage prepaid, to this corporation at its principal corporate office of the election to convert the same, and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. 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, 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 as of such date. If the conversion is in connection with

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an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended (the "Act"), the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(b) Conversion Price Adjustments of Preferred Stock.

For purposes of subsections 4(c)(i) and 4(c)(ii), references to the Series C Preferred Stock shall not be deemed to include or refer to Series C1 Preferred Stock. The Conversion Price of the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) Upon each issuance by this corporation of any Additional Stock (as defined below), without consideration or for a consideration per share less than one or more of the Conversion Prices of the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be (x) the number of shares of Common Stock outstanding immediately prior to such issuance (including Common Stock issuable upon conversion of all Preferred Stock then outstanding at the applicable Conversion Prices), plus the number of shares of Common Stock which the aggregate consideration received by this corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be (y) the number of shares of Common Stock outstanding immediately prior to such issuance (including Common Stock issuable upon conversion of all Preferred Stock then outstanding at the applicable Conversion Prices), plus the number of shares of such Additional Stock.

(B) No adjustment of the Conversion Price for the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock shall be made in an amount less than two cents per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward, and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being

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carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4) hereof, no adjustment of such Conversion Price pursuant to this subsection 4(c)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions, or other expenses allowed, paid, or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors, irrespective of any accounting treatment.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of subsection 4(c)(ii) hereof:

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued, and for a consideration equal to the consideration (determined in the manner provided in subsections 4(c)(i)(C) and (c)(i)(D)), if any, received by this corporation upon the issuance of such options or rights, plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable

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securities, or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or such options or rights were issued, and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities, or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(c)(i)(C) and (c)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable, or in the consideration payable to this corporation upon exercise of such options or rights or, upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Prices of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock, to the extent in any way affected by or computed using such options, rights, or securities shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange, or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Prices of the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock, to the extent in any way affected by or computed using such options, rights, or securities, or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the

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conversion or exchange of such securities, or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued, and the consideration deemed paid therefor pursuant to subsections 4(c)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination, or expiration of the type described in either subsection 4(c)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued by this corporation after the date of filing of these Restated Articles of Incorporation, other than

(A) Common Stock issued pursuant to a transaction described in subsection 4(c)(iii) hereof;

(B) Shares of Common Stock issued or issuable to employees, officers, or directors of, or consultants to, this corporation after the date of filing of these Restated Articles of Incorporation under a stock option, bonus, or purchase plan approved by the Board of Directors of this corporation;

(C) Common Stock issued upon conversion of shares of Preferred Stock;

(D) Shares of Series C Preferred Stock issuable upon exercise of warrants or any other rights to purchase Series C Preferred Stock outstanding as of the date of filing of these Restated Articles of Incorporation; and

(E) Shares of Common Stock issuable upon exercise of the warrants assumed by this corporation pursuant to Section 1.2 of the Agreement and Plan of Reorganization dated as of August 5, 1991 (copies of which are on file at this corporation and are available to shareholders of this corporation upon written request to the Secretary of this corporation).

(iii) In the event this corporation should at any time or from time to time fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock, or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities, or rights convertible into, or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents"), without payment of any consideration by such holder for the additional shares of

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Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split, or subdivision if no record date is fixed), the Conversion Prices of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Prices for the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate of shares of Common Stock outstanding.

(c) Other Distributions. In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends), or options or rights not referred to in subsection 4(c)(iii), then, in each such case, for the purpose of this subsection 4(d), the holders of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(d) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a Sale of the Corporation provided for in Section 2 hereof, or a subdivision or combination provided for elsewhere in this Section 4), provision shall be made so that the holders of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock shall thereafter be entitled to receive upon conversion of such shares, the number of shares

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of stock or other securities or property of this corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Prices then in effect and the number of shares purchasable upon conversion of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(e) No Impairment. This corporation will not, by amendment of its Restated Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4, and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock against impairment.

(f) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share, determined on the basis of the total number of shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock the holder is at the time converting into Common Stock, and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment

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in accordance with the terms hereof, and prepare and furnish to each holder of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock a certificate setting forth such adjustment or readjustment, and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock furnish or cause to be furnished to such holder a like certificate setting forth (A) all adjustments and readjustments, (B) the applicable Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock.

(g) Notices of Record Date. In the event of any taking by this corporation 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, any right to subscribe for, purchase, or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this corporation shall mail to each holder of Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution, or right, and the amount and character of such dividend, distribution, or right.

(h) Reservation of Stock Issuable Upon Conversion. This 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 Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G 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 Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G 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 Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock in addition to such other remedies as shall be available to the holder of such Preferred Stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized

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but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(i) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his or her address appearing on the books of this corporation.

5. Voting Rights. The holder of each share of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock could then be converted (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share), and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Except as otherwise provided herein or as required by law, and subject to the rights of series of Preferred Stock that may from time to time come into existence, the Preferred Stock and Common Stock shall vote together as a single class.

6. Protective Provisions. Subject to the rights of series of Preferred Stock that may from time to time come into existence, and in addition to any other rights provided by law, so long as shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock are outstanding, this corporation shall not:

(a) without first obtaining the approval (by vote or written consent) of the holders of not less than (i) a majority of the outstanding Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock (with all such shares voting together as a single class), and (ii) a majority of the Series D Preferred Stock and Series G Preferred Stock (voting together as a class), take any action that results in a Sale of the Corporation, other corporate reorganization, or dissolution; provided, however, that the separate class vote given to holders of Series D Preferred Stock and Series G Preferred Stock pursuant to this Subsection 6(a) shall not apply if the consideration to be received by each holder of Series D

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Preferred Stock and Series G Preferred Stock in connection with such Sale of the Corporation has a value equalling or exceeding \$2.51 per share (as such Series D Preferred Stock and Series G Preferred Stock is presently constituted), as mutually determined by this corporation and holders of a majority of the Series D Preferred Stock and Series G Preferred Stock (voting together as a separate class) then outstanding; and

(b) without first obtaining the approval (by vote or written consent) of the holders of not less than a majority of the total number of outstanding shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock if such series of Preferred Stock is effected thereby, take any action that: (i) alters, changes, or waives any rights, preferences, or privileges of such series of Preferred Stock, (ii) increases the number of authorized shares of such series of Preferred Stock, or (iii) creates (by reclassification or otherwise) any new class or series of shares having rights, preferences, or privileges senior to, or on parity with, such series of Preferred Stock.

7. Status of Converted or Redeemed Stock. In the event any shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, or Series G Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled, and shall not be issuable by this corporation. The Restated Articles of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in this corporation's authorized capital stock.

8. Repurchase of Shares. In connection with repurchases by this Corporation of its Common Stock issued to employees, officers, or directors of, or consultants to, this corporation pursuant to a stock option, bonus, or purchase plan approved by the Board of Directors, Sections 502 and 503 of the California General Corporation Law shall not apply in whole or in part with respect to such repurchases.

9. Dilutive Issues.

(a) For purposes of this Section 9, references to Series C Preferred Stock shall not be deemed to include, or refer to, Series C1 Preferred Stock, and, the following definitions shall apply:

(i) "New Securities" shall mean any Common Stock or Preferred Stock of this corporation, whether now authorized or not, and any rights, options, or warrants to purchase such Common Stock or Preferred Stock, and securities of any type whatsoever

that are, or may become, convertible into such Common Stock or Preferred Stock; provided, however, that "New Securities" shall not include (i) the issuance or sale of Common Stock (or options therefor) to employees, officers, directors, or consultants for the primary purpose of soliciting or retaining their employment or services, (ii) securities issued pursuant to or after consummation of a bona fide, firmly underwritten public offering of shares of Common Stock, registered under the Act pursuant to a registration statement on Form S-1, (iii) the issuance of securities pursuant to the conversion or exercise of convertible or exercisable securities, (iv) shares of this corporation's securities issued in connection with any stock split, stock dividend, or recapitalization by this corporation, (v) the issuance of securities in connection with a bona fide business acquisition of or by this corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock, or otherwise, or (vi) the issuance of stock, warrants, or other securities or rights to persons or entities with which this corporation has business relationships, provided such issuances are for other than primarily equity financing purposes, and provided further that at the time of any such issuance, the aggregate of such issuance and similar issuances in the preceding twelve month period do not exceed three percent (3%) of the then outstanding Common Stock of this corporation (assuming full conversion and exercise of all convertible and exercisable securities).

(ii) "Pro Rata Share" shall mean a fraction, the numerator of which equals (x) the number of shares of Common Stock issuable upon conversion of Series C Preferred Stock held by such Diluted Holder, and the denominator of which equals (y) the total number of shares of Common Stock of the Company then outstanding (assuming full conversion of all convertible securities).

(iii) "Dilutive Issuance" shall mean the issuance of New Securities for a consideration per share of Common Stock (assuming conversion or exercise in full of all such New Securities that are convertible into, or consist of rights, options, or warrants to purchase Common Stock) less than the Conversion Price of the Series C Preferred Stock in effect on the date of and immediately prior to such issue.

(iv) "Diluted Stock" shall mean shares of Series C Preferred Stock (including such stock issuable upon exercise of any right, option, or warrant) that have a Conversion Price per share greater than the consideration per share of Common Stock (assuming conversion or exercise in full of all such New Securities that are convertible into, or consist of rights, options, or warrants to purchase Common Stock) to be received in a Dilutive Issuance.

(v) "Diluted Holder" shall mean any holder of Diluted Stock.

(vi) "Participating Investor" shall mean any Diluted Holder that agrees to purchase at least its Pro Rata Share of a Dilutive Issuance pursuant to this Section 10. For the purposes of this subsection (vi), any shares of stock of a Dilutive Issuance which any affiliate of a Diluted Holder agrees to purchase shall be counted towards such Diluted Holder's Pro Rata Share.

(vii) "Non-Participating Investor" shall mean any Diluted Holder that is not a Participating Investor.

(b) In the event this corporation proposes to undertake a Dilutive Issuance, it shall give each shareholder that would become a Diluted Holder in such Dilutive Issuance a written notice (the "Issuance Notice") of such intention, describing the type of New Securities, the price, and the general terms upon which this corporation proposes to issue the same. Each such shareholder shall, within sixty (60) days from the date of the Issuance Notice, provide written notice to this corporation that (i) such shareholder agrees to become a Participating Investor for the price and upon the terms specified in the Issuance Notice, or (ii) such shareholder shall be a Non-participating Investor. Any shareholder who shall fail to provide such written notice within such sixty (60) day period shall be deemed to be a Non-participating Investor.

(c) All Series C Preferred Stock held by each and every Non-Participating Investor shall be automatically converted immediately prior to the closing of a Dilutive Issuance as follows:

(i) Each share of Series C Preferred Stock shall automatically be converted into one (1) share of Series C1 Preferred Stock.

(ii) Each right, option, or warrant to purchase a share of Series C Preferred Stock shall automatically be converted into a right, option, or warrant (of identical terms) to purchase one (1) share of Series C1 Preferred Stock.

(d) Upon the conversion of Series C Preferred Stock held by a Non-Participating Investor as set forth herein, each Non-Participating Investor shall surrender to this corporation the certificate or certificates representing his, her, or its Series C Preferred Stock, which shall be exchanged by this corporation for a like number of shares of Series C1 Preferred Stock. Such shares of Series C Preferred Stock shall no longer be outstanding on the books of this corporation, and the Non-participating Investor shall be treated for all purposes as

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the record holder of such shares of Series C1 Preferred Stock on the date of closing of the applicable Dilutive Issuance.

C. Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution, or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section 2 of Division (B) of this Article III hereof.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE IV

Section 1. The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

Section 2. This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with the agents, vote of shareholders or disinterested directors, or otherwise in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to applicable limits set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to this corporation and its shareholders.

* * *

TRADEMARK

REEL 0895 FRAME 190

MACROMIND, INC.

OFFICERS' CERTIFICATE

Timothy Mott and Richard B. Wood certify and verify that:

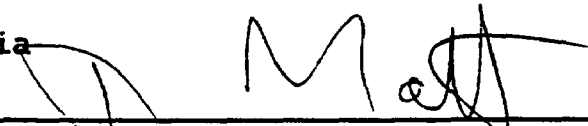
1. They are President and Secretary, respectively, of MacroMind, Inc., a California corporation ("MacroMind").

2. The total number of outstanding shares of each class entitled to vote on the Agreement of Merger dated as of November 1, 1991 between MacroMind and Paracomp, Inc. (the "Merger Agreement"), a copy of which is attached hereto, is as follows: Common Stock, 4,217,418 shares; Series B Preferred Stock, 255,320 shares; Series C Preferred Stock, 1,986,604 shares; and Series D Preferred Stock, 3,293,413 shares.

3. The principal terms of the Merger Agreement were approved by MacroMind by a vote of a number of shares of each class which equaled or exceeded the vote required. The following is a list of the classes that were entitled to vote and the percentage vote required by each such class: a majority of the outstanding shares of Common Stock; a majority of the outstanding shares of Series B, C and D Preferred Stock voting together as a class; and a majority of the outstanding shares of Series B Preferred Stock, a majority of the outstanding shares of Series C Preferred Stock and a majority of the outstanding shares of Series D Preferred Stock.

We 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: November 1, 1991
San Francisco, California



Timothy Mott, President



Richard B. Wood, Secretary

TRADEMARK

REEL 0895 FRAME 191

PARACOMP, INC.

OFFICER'S CERTIFICATE

William R. Woodward certified and verifies that:

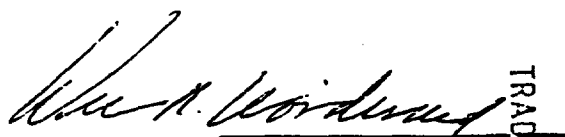
1. He is President and Secretary of Paracomp, Inc., a California corporation ("Paracomp").

2. The total number of outstanding shares of each class entitled to vote on the Agreement of Merger dated as of October 31, 1991 between Macromind and Paracomp, Inc. (the "Merger Agreement"), a copy of which is attached hereto, is as follows: Common Stock, 1,823,429 shares; Series A Preferred Stock, 160,000 shares; Series B Preferred Stock, 660,000 shares and Series C Preferred Stock, 3,490,000 shares.

3. The principle terms of the Merger Agreement were approved by Paracomp by a vote of a number of shares of each class which equaled or exceeded the vote required. The following is a list of the classes that were entitled to vote and the percentage vote required by each such class: a majority of the outstanding shares of Common Stock and a majority of the outstanding shares of Series A, B and C preferred Stock voting together as a class.

The undersigned 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 his own knowledge.

Dated: November 1, 1991
Los Angeles, California



William R. Woodward
President and Secretary

TRADEMARK

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