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

07-28-2000

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



101417295

RECORDATION FORM COVER SHEET
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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 License
- Security Agreement Nunc Pro Tunc Assignment
- Merger Effective Date
Month Day Year _____
- Change of Name
- Other _____

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name Audible Magic Corporation

12281999

Formerly Wired Air, Inc.

75873810

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

Receiving Party

Mark if additional names of receiving parties attached

Name Audible Magic Corporation

DBA/AKA/TA _____

Composed of _____

Address (line 1) 985 University Avenue, Suite 35

Address (line 2) _____

Address (line 3) Los Gatos CA 95032
City State/Country Zip Code

- Individual General Partnership Limited Partnership 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.)
- Corporation Association
- Other _____

Citizenship/State of Incorporation/Organization California

FOR OFFICE USE ONLY

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Mail documents to be recorded with required cover sheet(s) information to:
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TRADEMARK
REEL: 002110 FRAME: 0038

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)

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.

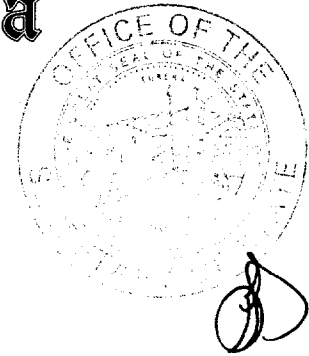
Polly A. Dinkel

6/27/00

Name of Person Signing

Signature

Date Signed

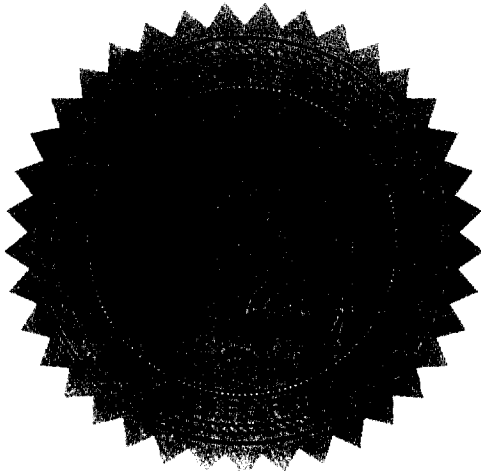


SECRETARY OF STATE

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

That the attached transcript of 15 page(s) has been compared with the record on file in this office, 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



DEC 9 1999

Bill Jones

Secretary of State

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
WIRED AIR, INC.

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

DEC 21 1999

BILL JONES Secretary of State

Vance Ikezoye does hereby certify that:

- A. He is the President and Secretary of Wired Air, Inc., a California corporation.
- B. The Articles of Incorporation of the Corporation, as amended, are hereby amended and restated in their entirety to read as follows:

ARTICLE I

The name of the Corporation is Audible Magic Corporation.

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

The Corporation is authorized to issue two classes of shares of capital stock designated "Common Stock" and "Preferred Stock," respectively. The total number of shares of capital stock that this Corporation shall have authority to issue is Sixty Five Million (65,000,000), all with a par value of one-one-hundredth of one cent (\$0.0001). The number of shares of Common Stock authorized to be issued is Forty Five Million (45,000,000) and the number of shares of Preferred Stock authorized to be issued is Twenty Million (20,000,000).

Five Million Five Hundred Thousand (5,500,000) shares of Preferred Stock shall be designated as "Series A Preferred Stock." The balance of the shares of Preferred Stock may be issued, from time to time, in one or more additional series. The Board of Directors is authorized to fix the number of shares of any series of Preferred Stock and to determine the designation of any such series. The Board of Directors is also authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or

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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.

The rights, preferences, privileges and restrictions granted to and imposed upon the Common Stock and the Series A Preferred Stock are as follows:

1. **Definitions.** The following terms shall have the following definitions:

1.1 **"Board"** shall mean the Board of Directors of the Corporation.

1.2 **"Corporation"** shall mean this corporation.

1.3 **"Conversion Price"** shall mean the Series A Conversion Price.

2. **Dividends and Distributions.** The holders of the outstanding shares of Common Stock and Series A Preferred Stock shall at all times be treated as a single class with respect to dividends and distributions (including dividends in or distributions of shares of Common Stock or other securities of the Corporation) and such single class shall be entitled to dividends when, as, and if declared by the Board, out of any funds legally available therefor; provided, however, that each share of Series A Preferred Stock shall be entitled to dividends and distributions equal to the aggregate amount of such dividends and distributions which the holder of that number of shares of Common Stock into which such shares of Series A Preferred Stock may be converted (on the record date fixed for determining payment of such dividend or distribution) shall be entitled to receive.

3. **Liquidation.**

3.1 **Series A Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock, the holders of each share of Series A Preferred Stock then outstanding shall be entitled to be paid, pro rata, out of the assets of the Corporation available for distribution to its shareholders, whether such assets are capital, surplus or earnings, an amount equal to Thirty Cents (\$0.30) for each share of Series A Preferred Stock, plus an amount equal to all declared but unpaid dividends thereon, to and including the date full payment shall be tendered to the holders of Series A Preferred Stock with respect to such liquidation, dissolution or winding up, prior and in preference to payment of any dividend to the holders of Common Stock (other than dividends payable solely in Common Stock of the Corporation with respect to the Common Stock).

3.2 **Common Stock.** After the payment or distribution to the holders of the Series A Preferred Stock of the full amount set forth in Section 3.1, the holders of the Common

Stock then outstanding shall be entitled pro rata, based on the number of shares outstanding, to all the remaining assets of the Corporation.

3.3 Fair Market Value of Distributed Property. Whenever the distribution provided for in this Section 3 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board.

4. Conversion. The holders of the Series A Preferred Stock shall have the following conversion rights (the "**Conversion Rights**"):

4.1 Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.30 by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series A Preferred Stock shall be \$0.30. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4.7.

4.2 Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price for the Series A Preferred Stock upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Corporation, at a public offering price (prior to underwriters' discounts and expenses) equal to or exceeding \$1.00 per share of Common Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) and the aggregate gross proceeds to the Corporation and/or any selling stockholders (before deduction for underwriters' discounts and expenses relating to the issuance) of which exceed \$25,000,000.

4.3 Mechanics of Conversion.

4.3.1 Before any holder of shares of Series A Preferred Stock shall be entitled voluntarily to convert the same into shares of Common Stock, such holder shall surrender the certificates representing such shares, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock or Common Stock, or shall notify the Corporation or transfer agent that such certificates have been lost, stolen or destroyed and shall execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith, and shall give written notice to the Corporation at such office that such holder elects to convert the same, stating therein the number of shares of Series A Preferred Stock being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to

such holder of Series A Preferred Stock new certificates for the number of shares of Common Stock to which such holder shall be entitled.

4.3.2 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 Series A Preferred Stock to be converted, or delivery of the above-described notification and indemnity, 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 at such time on such date, unless the transfer books of the Corporation are closed on such date, in which event such person or persons shall be deemed to have become a shareholder or shareholders of record on the next succeeding date on which the transfer books are open, but the Conversion Price shall be that in effect on such prior time and date. Upon conversion of only a portion of the number of shares of Series A Preferred Stock represented by a certificate surrendered for conversion, the Corporation shall issue and deliver to the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Series A Preferred Stock representing the unconverted portion of the certificate so surrendered.

4.4 Dividend Payment Upon Conversion. Upon any conversion of shares of Series A Preferred Stock into shares of Common Stock, the Corporation shall pay all declared, but unpaid dividends on the shares of Series A Preferred Stock being converted to and including the date of such conversion; provided, however, that if the Corporation shall be prohibited by California law from making all such payments in cash, the Corporation shall, in lieu of making a full cash payment of all such declared, but unpaid dividends, make payment thereof in cash, to the extent permitted by California law and shall pay the balance in whole shares of Common Stock, valued at the applicable Conversion Price then in effect plus cash in lieu of any fractional share.

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time effect a subdivision of the outstanding shares of Common Stock (or other securities into which the Series A Preferred Stock may be converted), then, and in each such case, the Conversion Price as in effect immediately before such subdivision shall be proportionately decreased and, conversely, if the Corporation shall at any time combine the outstanding shares of Common Stock (or other securities into which the Series A Preferred Stock may be converted), then, and in each such case, the Conversion Price as in effect immediately before such combination shall be proportionately increased.

4.6 Adjustment for Reclassification, Exchange and Substitution. If the Common Stock (or other securities into which the Series A Preferred Stock may be converted) shall at any time be reclassified or otherwise changed, whether by reorganization, reclassification or otherwise (other than by a merger, consolidation or sale of assets described in Section 4.6), then, and in each such event, each share of Series A Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock and other securities or property which the

holder of that number of shares of Common Stock (or other securities) into which such shares of Series A Preferred Stock shall be convertible immediately prior to such event would be entitled to receive upon the occurrence of such event.

4.7 Merger, Consolidation and Sale of Assets. If the Corporation shall at any time merge or consolidate with or into another corporation (other than where the Corporation is the surviving corporation and there is no reclassification or change in the Common Stock or other securities into which Series A Preferred Stock may be converted) or shall sell all or substantially all of its properties and assets to any other person, then, as a part of such merger, consolidation or sale (other than as defined above), provision shall be made to assure that the holders of Series A Preferred Stock shall thereafter be entitled to receive, upon conversion of the Series A Preferred Stock, the kind and amount of shares of stock and other securities or property of the Corporation, or of the successor corporation resulting from such merger, consolidation or sale, that the holders of that number of shares of Common Stock (or other securities) into which the Series A Preferred Stock shall be convertible immediately prior to such merger, consolidation or sale would be entitled to receive on such merger, consolidation or sale. In every such case, appropriate adjustment shall be made in application of the provisions of this Section 4 with respect to the rights of the holders of Series A Preferred Stock after the merger, consolidation or sale to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the kind and amount of shares or other property into which the Series A Preferred Stock may be converted) shall be applicable after that event, as nearly equivalent as may be practicable.

4.8 Adjustment of Conversion Price. The Conversion Price shall be subject to adjustment from time to time upon the happening of certain events, as follows:

4.8.1 Sale of Stock.

4.8.1.1 Issuance of Additional Stock below Purchase Price.

If the Corporation shall issue, after the date upon which any shares of Series A Preferred Stock were first issued (the "**Purchase Date**"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock (a "**Dilution Sale**"), then the Conversion Price in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4.8.1.1, unless otherwise provided in Section 4.8.1.

4.8.1.1.1 Adjustment Through Qualified Financing.

In the event that a Dilution Sale takes place at any time through the closing of a sale of capital stock of the Corporation in which the cash proceeds to the Corporation are not less than Two Million Dollars (\$2,000,000), excluding sales of Common Stock to employees, officers, directors and consultants in connection with employee benefit plans and excluding amounts received from the sale of debt instruments convertible into Common Stock until such times as such instruments

are converted into Common Stock (the "**Qualified Financing**"), then the Conversion Price shall be reduced to the lowest price per share at which any such share of Additional Stock has been issued or sold including Additional Stock sold in the Qualified Financing. The securities sold in the Qualified Financing shall include all warrants, options or other rights to purchase securities or other items of value delivered by the Company to the purchasers of the capital stock in the Qualified Financing on and after the date of these Amended and Restated Articles in connection with the financing of the Company including without limitation in connection with any bridge loans which may be converted at the consummation of the Qualified Financing into securities issued in the Qualified Financing.

4.8.1.1.2 Adjustment After Qualified Financing. In the event that a Dilution Sale takes place after the closing of the Qualified Financing (a "**Post Financing Dilution Sale**"), the Conversion Price then in effect shall be adjusted by multiplying the Conversion Price then in effect by a fraction, 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 shares of Additional Stock so issued would purchase at such Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such shares of Additional Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Series A Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

4.8.1.2 Definition of Additional Stock. For purposes of this Section 4.8.1, "**Additional Stock**" shall mean any shares of Common Stock or Common Stock Equivalents issued other than:

4.8.1.2.1 Up to an aggregate of 3,500,000 shares of Common Stock issuable or issued to employees, officers, consultants, contractors, advisors or directors of the Corporation for the primary purpose of soliciting or retaining their employment or services directly or pursuant to a stock option plan, restricted stock plan or other agreement approved by the Board,

4.8.1.2.2 Capital stock, or options or warrants to purchase capital stock, issued to licensors of intellectual property or financial institutions, lessors or vendors in connection with commercial credit arrangements, equipment financings or similar transactions when approved by the Board,

4.8.1.2.3 Shares of Common Stock or Preferred Stock issuable upon exercise of outstanding options, notes or warrants,

4.8.1.2.4 Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board,

4.8.1.2.5 Shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock, and

4.8.1.2.6 Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Series A Preferred Stock will be converted to Common Stock.

4.8.1.3. No Fractional Adjustments. No adjustment of the Conversion Price for the Series A Preferred Stock shall be made in an amount less than one cent per share (subject to appropriate adjustments for stock splits and stock dividends and provided that at such time as events causing adjustments accumulating one cent or more have occurred adjustments to Conversion Price shall be made), 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 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.

4.8.2 Issue or Sale of Common Stock Equivalents.

4.8.2.1 For purposes of this Article III, the following terms shall have the following definitions:

4.8.2.1.1 "**Convertible Securities**" means any security which is directly or indirectly convertible into Common Stock.

4.8.2.1.2 "**Participating Securities**" means any security which participates with Common Stock in dividends or upon liquidation.

4.8.2.1.3 "**Rights**" means any option, warrant or right to purchase Common Stock, Convertible Securities or Participating Securities.

4.8.2.1.4 "**Common Stock Equivalents**" means, collectively, Convertible Securities, Participating Securities and Rights, or any of them.

4.8.2.1.5 "**Effective Price**" means the quotient obtained by dividing (i) Minimum Consideration by (ii) Maximum Shares upon Exercise.

4.8.2.1.6 "Maximum Shares upon Exercise" means the maximum number of shares of Common Stock issuable at any time during the term of a Common Stock Equivalent upon complete exercise or full conversion of the Convertible Securities or Rights or presently represented by Participating Securities, computed without regard to contingent adjustments to the number of shares issuable upon exercise or conversion (other than adjustments caused solely by the passage of time which increase the Maximum Shares upon Exercise). For the purpose of calculating Maximum Shares upon Exercise, the number of shares of Common Stock represented by each share of Participating Securities shall be the highest (excluding infinitely large numbers and numbers calculated by dividing by zero) of: (i) that proportion of the dividends of the Corporation to which a share of Participating Securities is entitled because of its right of participation compared to the proportion of dividends of the Corporation to which a share of Common Stock is entitled; (ii) that proportion of any liquidation distribution of the Corporation to which a share of Participating Securities is entitled because of its right of participation compared to the proportion of any liquidation distribution of the Corporation to which a share of Common Stock is entitled; or (iii) the maximum number of shares of Common Stock issuable upon conversion or exercise of a Participating Security at any time during the term of any Participating Security which is also a Convertible Security, upon complete conversion or exercise thereof, without regard to contingent adjustments to the number of shares issuable upon exercise or conversion (other than adjustments caused solely by the passage of time which increase Maximum Shares upon Exercise).

4.8.2.1.7 "Minimum Consideration" means the minimum aggregate consideration payable at any time for the purchase of the Common Stock Equivalents and, during the term of the Common Stock Equivalents, upon complete exercise or full conversion of the Common Stock Equivalents computed without regard to contingent adjustments to exercise or conversion price (other than adjustments caused solely by the passage of time which reduce Minimum Consideration).

4.8.2.2 The Conversion Price shall be adjusted as a result of the sale or issuance of Common Stock Equivalents as set forth in Section 4.8.1 hereof, provided that for the purposes of such adjustment: (i) the consideration received for such sale or issuance shall be the product of (A) Effective Price and (B) Maximum Shares upon Exercise; and (ii) the number of shares issued in the present shall be the Maximum Shares upon Exercise.

4.8.2.3 In the event a Dilution Sale or other sale of Common Stock Equivalents has occurred and a contingent event not considered in the computation of Minimum Consideration or Maximum Shares upon Exercise occurs, which if considered at the time of the Dilution Sale or at the time of another sale of Common Stock Equivalents would have had the effect of reducing a Conversion Price, the Conversion Price shall be retroactively adjusted to reflect such contingent event and additional shares of Common Stock or other securities as required hereunder shall be issued to any previous holder of a series of Series A Preferred Stock,

if such holder previously exercised all or any part of such holder's conversion rights hereunder, to reflect the additional shares to which such holder would have been entitled had the retroactively adjusted Conversion Price been in effect on the date of exercise of such conversion rights.

4.8.2.4 If the Corporation has issued Convertible Securities or Rights causing an adjustment to a Conversion Price pursuant to this Section 4.8, and said Convertible Securities or Rights subsequently expire without being converted or exercised, by reason of lapse of time or otherwise, and without payment of any kind or nature to, or for the benefit of, any present or prior holder of the Convertible Securities or Rights by any party in connection with such Convertible Securities or Rights, then, and in such event, the Conversion Price shall be recalculated and adjusted in accordance with Section 4 hereof as if such Convertible Securities or Rights had never been issued, but taking into account all events which would have been Dilution Sales if such Convertible Securities or Rights are disregarded; provided, however, that this Section 4.8.2.4 shall not have any effect on any conversion of any series of Series A Preferred Stock prior to the expiration date of such expired Convertible Securities or Rights.

4.8.3 Dilution in Case of Other Stock or Securities. In case any securities, other than Common Stock of the Corporation, shall at the time be receivable by any holder of Series A Preferred Stock upon the conversion of Series A Preferred Stock, and in case any additional shares of such securities or any securities convertible into or exchangeable for such securities shall be issued or sold for a consideration such as to dilute the conversion rights of the Series A Preferred Stock, then, and in each such case, the Conversion Price shall be adjusted substantially in the manner provided in this Section 4 so as to protect the holders of Series A Preferred Stock against the effect of such dilution.

4.8.4 Expenses Deducted. Upon any issue or sale of any Common Stock, Common Stock Equivalents or other securities, the consideration received therefor shall be deemed to be the net amount received by the Corporation after deducting any expenses incurred and any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale.

4.8.5 Determination of Value of Non-Cash Consideration. Upon any issue or sale for consideration other than cash, or consideration part of which is other than cash, of any shares of Common Stock, Common Stock Equivalents or other securities, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board. In case any Common Stock or Common Stock Equivalents shall be issued or sold together with other securities or assets of the Corporation for a consideration which covers both, the consideration for the issue or sale of such Common Stock or Common Stock Equivalents shall be deemed to be the portion of such consideration allocated thereto in good faith by the Board.

4.9 Time of Adjustments to Conversion Price.

4.9.1 All adjustments to a Conversion Price, unless otherwise specified herein, shall be effective as of the earlier of:

4.9.1.1 the date of issue of the security causing the adjustment;

4.9.1.2 the date of sale of the security causing the adjustment; or

4.9.1.3 the effective date of a division or combination of shares.

4.9.2 If the Corporation shall issue Common Stock Equivalents with different Effective Prices and such Common Stock Equivalents would under this Section 4 require adjustments to Conversion Price on the same day, then such Conversion Price shall be adjusted seriatim for each type of Common Stock Equivalent with a different Effective Price, adjusting the Conversion Price first for the Common Stock Equivalent with the highest Effective Price, followed by the adjustment for the Common Stock Equivalent with the next highest Effective Price and so on until all adjustments to Conversion Price have been made.

4.10 Notice of Adjustments. In each case of an adjustment of a Conversion Price, the Corporation, at its expense, shall cause the Chief Financial Officer of the Corporation to compute such adjustment and prepare a certificate setting forth such adjustment and showing in detail the facts upon which such adjustment is based, including a statement of (a) the consideration received or to be received by the Corporation for any additional shares of Common Stock issued or sold or deemed to have been issued or sold, (b) the number of shares of Common Stock outstanding or deemed to be outstanding, and (c) the adjusted Conversion Price. The Corporation shall promptly mail a copy of each such certificate to each holder of Series A Preferred Stock affected by such adjustment.

4.11 Duration of Adjusted Conversion Price. Following each adjustment of Conversion Price, such adjusted Conversion Price shall remain in effect until a further adjustment of such Conversion Price hereunder.

4.12 Minimum Adjustment. No adjustment of a Conversion Price shall be made in an amount less than One Cent (\$0.01) per share (subject to appropriate adjustments for stock splits and stock dividends, and provided that at such time as events causing adjustments accumulating One Cent (\$0.01) or more have occurred adjustments to a Conversion Price shall be made), and no adjustment of a Conversion Price shall have the effect of increasing a Conversion Price above such Conversion Price in effect immediately prior to such adjustment (except for the upward adjustment provided in Sections 4.4 and 4.8.2.4).

4.13 Notices of Record Date. In the event of any reclassification of or other change in the capital stock of the Corporation or any merger or consolidation of the Corporation,

transfer of all or substantially all of the assets of the Corporation to any other person or voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of shares of Series A Preferred Stock, at least thirty (30) days prior to the record date of such event, a notice specifying the date on which such event is expected to become effective and the time, if any, that is to be fixed as to when the holders of record of shares of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such event.

4.14 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of any share or shares of Series A Preferred Stock. The number of shares of Common Stock to which a holder of shares of Series A Preferred Stock shall be entitled shall be based on the aggregate number of shares of Series A Preferred Stock then being converted by such holder. In lieu of any fractional share to which such holder would otherwise be entitled, the Corporation shall pay cash equal to the fair market value of such fraction based on the fair market value of one (1) share of Common Stock on the date of conversion, as determined in good faith by the Board.

4.15 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 (or other securities into which the Series A Preferred Stock may be converted), solely for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its shares of Common Stock (or other securities) as shall, from time to time, be sufficient to effect the conversion all of the shares of Series A Preferred Stock then outstanding. If at any time the number of authorized but unissued shares of Common Stock (or other securities) shall not be sufficient to effect the conversion of all the Series A Preferred Stock then outstanding, 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 (or other securities) to such number of shares as shall be sufficient for such purpose. If any shares of Common Stock reserved for the purpose of conversion of shares of Series A Preferred Stock require registration, qualification or listing with, or approval of, any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise before such shares may be validly issued or delivered upon conversion, the Corporation will, in good faith, at its own expense and as expeditiously as possible, endeavor to secure such registration, qualification, listing or approval, as the case may be.

4.16 Notices. Any notice required by the provisions of this Section 4 to be given to each holder of shares of Series A Preferred Stock shall be deemed given ten (10) business days after the same has been deposited in the United States mail, certified or registered, return receipt requested, postage prepaid and addressed to each holder of record at such holder's address appearing on the stock record books of the Corporation.

4.17 Payment of Taxes. The Corporation will pay all taxes and other governmental charges (other than taxes based on income) that may be imposed in respect of the issue or delivery of shares of Common Stock (or other securities or property) upon conversion of Series A Preferred Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax, or has established to the satisfaction of the Corporation that such tax has been paid.

4.18 No Dilution or Impairment. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times, in good faith, assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of holders of Series A Preferred Stock against impairment.

4.19 Status of Converted Stock. In case any shares of Series A Preferred Stock shall be converted or redeemed pursuant hereto, the shares so converted or redeemed shall be canceled and the authorized number of shares of Series A Preferred Stock shall be reduced accordingly.

5. Voting Rights. Except as otherwise expressly provided herein or as required by law, the holders of the Series A Preferred Stock and the Common Stock shall be entitled to vote on all matters. Each share of Common Stock shall be entitled to one vote and each share of Series A Preferred Stock shall be entitled to that number of votes equal to the largest number of whole shares of Common Stock into which such share of Series A Preferred Stock may be converted as of the close of business on the record date fixed for any meeting of the shareholders of the Corporation or the effective date of any written consent of the shareholders of the Corporation (with any fractional share determined on an aggregate basis for each holder being rounded up to the next whole share). Except as otherwise expressly provided herein or as required by law, the holders of Series A Preferred Stock and the Common Stock shall vote together as a single class and not as separate classes.

6. Protective Provisions. So long as any shares of Series A Preferred Stock remain outstanding, the vote or written consent by the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock shall be required for:

6.1 any amendment or change of the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of the Series A Preferred Stock;

6.2 any action that authorizes, creates or issues shares of any class of stock having preferences superior to the Series A Preferred Stock;

6.3 any action that reclassifies any outstanding shares into shares having preferences or priority as to dividends or assets senior to the preferences of the Series A Preferred Stock;

6.4 any sale, conveyance, or other disposition of all or substantially all of the Corporation's property or business or any merger into, or reorganization, combination or consolidation with, any other corporation (other than a wholly-owned subsidiary corporation), provided that this provision shall not apply to a merger effected solely for the purpose of changing the domicile of the Corporation;

6.5 any action that increases or decreases the authorized number of shares of Series A Preferred Stock (other than an increase as provided in either subdivision (b) of Section 405 or subdivision (c) of Section 902 of the General Corporation Law of California);

6.6 any action to effect an exchange, reclassification, or cancellation of all or part of the shares of Series A Preferred Stock, including a reverse stock split but excluding a stock split; or

6.7 any action that effects an exchange, or creates a right of exchange, of all or part of the shares of another class into shares of Series A Preferred Stock.

7. **Consent to Repurchase.** Each holder of shares of Series A Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the General Corporation Law of the State of California, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees of or consultants to the Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase.

8. **Construction.** A reference in this Article III to any Section shall include a reference to every Section the number of which begins with the number of the Section to which reference is specifically made (e.g., a reference to Section 4.3 shall include a reference to Sections 4.3.1 and 4.3.2).

ARTICLE IV

The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the General Corporation Law of California) for breach of duty to the Corporation and its stockholders through bylaw provisions or

through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code.

Any repeal or modification of the foregoing provisions of this Article IV by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

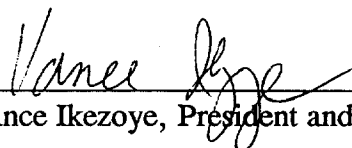
C. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the Board of Directors of the Corporation.

D. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the Corporations Code. The total number of outstanding shares of the Corporation is Ten Million (10,000,000), consisting solely of Common Stock. The number of shares voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%) of the Common Stock.

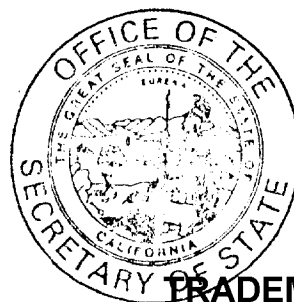
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I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate are true and correct of my own knowledge.

Date: December 20, 1999



Vance Ikezoye, President and Secretary



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