

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

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1-26-00

03-06-2000



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U.S. Department of Commerce
Patent and Trademark Office

TRADEMARK

JAN 26 2000

**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

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

Submission Type

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

Conveyance Type

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

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other

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 attached from Assignment.)

Citizenship/State of Incorporation/Organization

03/03/2000 DCORTES 00000077 75571511

01 FC:481 40.00 OP
02 FC:482 75.00 OP

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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 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

TRADEMARK
REEL: 002029 FRAME: 0878

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1) JAN 26

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)
75/571,511	
75/571,512	
75/640,928	
75/717,006	

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.

Joseph P. Sullivan
Name of Person Signing

Joseph P. Sullivan
Signature

January 26, 2000
Date Signed

jsulliva276/1.926736-1

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "ALLCAM COMMUNICATIONS INC.", CHANGING ITS NAME FROM "ALLCAM COMMUNICATIONS INC." TO "VIDEOSHARE, INC.", FILED IN THIS OFFICE ON THE TWELFTH DAY OF NOVEMBER, A.D. 1999, AT 11 O'CLOCK A.M.

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



Edward J. Freel

Edward J. Freel, Secretary of State

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991482578

0078020

AUTHENTICATION: .

11-12-99

DATE:

TRADEMARK

REEL: 002029 FRAME: 0880

FIRST RESTATED
CERTIFICATE OF INCORPORATION
OF
ALLCAM COMMUNICATIONS INC.

AllCam Communications Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of the Corporation, by unanimous written consent on November 10, 1999, in accordance with the provisions of Section 141(f) of the General Corporation Law of Delaware, duly adopted a resolution setting forth a proposed First Restated Certificate of Incorporation of the Corporation. The resolution setting forth the proposed First Restated Certificate of Incorporation is as follows:

RESOLVED: That the Board of Directors of the Corporation declare it advisable and in the best interests of the Corporation that the Corporation's Certificate of Incorporation be amended and restated so that it reads in its entirety in the form attached hereto as Exhibit A (the "Restated Certificate"), which Restated Certificate will, among other things, change the Corporation's corporate name to Videoshare, Inc.

SECOND: That the stockholders of the Corporation duly adopted such resolution by written consent vote in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That said First Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by Gad Liwerant, President, this 12th day of November, 1999.

AllCam Communications Inc.

By: 

Name: Gad Liwerant
Title: President

FIRST RESTATED
CERTIFICATE OF INCORPORATION
OF
ALLCAM COMMUNICATIONS INC.

FIRST: The name of the Corporation is VideoShare, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the City of Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to develop, operate and market internet products and services and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total numbers of shares of capital stock that the Corporation is authorized to issue is 5,536,669 shares, \$.01 par value per share, consisting of 4,251,370 shares of Common Stock and 1,285,299 shares of Preferred Stock. The Preferred Stock consists of 870,053 shares of Series A Convertible Preferred Stock ("Series A Preferred Stock") and 415,246 shares of Series A-1 Non-Voting Convertible Preferred Stock ("Series A-1 Preferred Stock"). A statement of the powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions of the Preferred Stock is as follows:

A. Voting Rights. The holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each share of Preferred Stock could be converted on the record date for the vote or consent of shareholders and, except as otherwise required by law, shall have voting rights and powers equal to the voting rights and powers of the Common Stock, provided that holders of Series A-1 Preferred Stock, shall have no voting rights, and provided further that with respect to any vote that is limited to the holders of Preferred Stock and does not include the holders of Common Stock, the holder of each share of Preferred Stock (other than Series A-1 Preferred Stock) shall be entitled to the number of votes equal to the number of shares of Preferred Stock held by such holder. The holder of each share of Preferred Stock (other than Series A-1 Preferred Stock) shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the corporation and shall vote with holders of the Common Stock upon the election of directors and upon any other matter submitted to a vote of shareholders, except those matters required by law to be submitted to a class vote. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Common Stock into which

shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half rounded upward to one).

B. Dividend Rights. The holders of record of Preferred Stock shall be entitled to receive, when and as declared from the surplus only by the Board of Directors, cash dividends of \$.2124 and \$.2124 per annum per share of Series A Preferred Stock and Series A-1 Preferred Stock, respectively. The cash dividends on the Series A Preferred Stock and Series A-1 Preferred Stock, shall be cumulative and shall be payable before any dividends or distributions on Common Stock shall be paid or set apart, so that if in any annual period, dividends amounting to \$.2124 and \$.2124, respectively, shall not have been paid thereon or set apart therefor, the deficiency shall be payable before any dividends or distributions shall be paid upon or set apart for the Common Stock. Cash dividends on the Preferred Stock shall accrue from their date of issue. Whenever all cumulative dividends on the Preferred Stock for all previous years shall have been declared, and shall have become payable, and the accrued dividend for the current year shall have been declared, and the Corporation shall have paid such declared cumulative dividends for previous years and such accrued dividend for the current year upon said Preferred Stock, the holders of Common Stock shall be entitled to receive, when and as declared from the remaining surplus of the Corporation after the payment of the cumulative dividends and accrued dividend for the current year upon the Preferred Stock as aforesaid, such dividends as shall be declared by the Board of Directors. Upon any conversion of shares of Preferred Stock pursuant to Section D hereof, any and all rights to such accrued and undeclared dividends on such shares shall terminate.

C. Liquidation Rights.

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid first out of the assets of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of the Common Stock by reason of their ownership thereof, an amount per share of Series A Preferred Stock and Series A-1 Preferred Stock (the "Liquidation Amount") equal to \$3.54 and \$3.54, respectively, plus all accumulated but unpaid dividends. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Preferred Stock the full amount to which they shall be entitled, the holders of shares of Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation according to the respective amounts which would be payable with respect to the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full. Notwithstanding the foregoing, the liquidation rights of holders of Preferred Stock hereunder will automatically be waived by such holders in the event that any Qualifying Transaction results in a purchase price or merger consideration for the Corporation in an amount greater than \$10.62 and \$10.62 per share of Series A Preferred Stock and Series A-1 Preferred Stock, respectively.

(ii) After payment to the holders of Preferred Stock of the amounts set forth above, the holders of shares of Common Stock then outstanding shall be entitled to receive the remaining assets and funds of the Corporation available for distribution to its stockholders in proportion to the shares of Common Stock then held by them; provided, however, that the holders of Series A Preferred Stock and Series A-1 Preferred Stock shall be entitled by reason of their ownership thereof to participate in any such distribution of any remaining assets or surplus funds to the holders of the Common Stock as if the holders of the Series A Preferred Stock and Series A-1 Preferred Stock converted such securities into Common Stock at the applicable Conversion Price (as defined below) immediately prior to the date of such event in addition to receipt of the amounts to which they are entitled on account of their ownership of the Series A Preferred Stock and Series A-1 Preferred Stock as set forth above.

(iii) The merger or consolidation of the Corporation into or with another corporation, the sale of all or substantially all the assets of the Corporation or the sale of the Corporation through the sale of the stock of the stockholders unless the Corporation's stockholders immediately prior to such an event hold, immediately after such event, at least 50% of the general voting power of the surviving or acquiring entity by virtue of their ownership of the Corporation's equity securities (each a "Qualifying Transaction") of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Article Four; provided, however, that each holder of Preferred Stock shall have the right to elect the benefits of the provisions of Section D(vii) hereof in lieu of receiving payment in liquidation, dissolution or winding up of the Corporation pursuant to this Article Four. The amount deemed distributed to the holders of Preferred Stock upon any such Qualifying Transaction shall be the cash or the value of the property, rights or securities distributed to such holders by the acquiring person, firm or other entity. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors of the Corporation.

D. Optional Conversion.

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

(i) Right to Convert.

(a) Each issued and outstanding share of Series A Preferred Stock and Series A-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time without the payment of additional consideration, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the product of \$3.54 and \$3.54, respectively, times the number of shares of Series A Preferred Stock and Series A-1 Preferred Stock to be converted, by the "Conversion Price" per share (as defined below) in effect for such series at the time of conversion. The "Conversion Price" per share at which shares of Common Stock shall be deliverable upon conversion of shares of Series A Preferred Stock and Series A-1 Preferred Stock shall initially be \$3.54 and \$3.54 respectively. Such initial Conversion

Price per share at which shares of Series A Preferred Stock and Series A-1 Preferred Stock may be converted into shares of Common Stock shall be subject to adjustment from time to time as provided below.

(b) In the event of a liquidation of the Corporation (including any Qualifying Transaction treated as a liquidation under Section C hereof), the Conversion Rights shall terminate at the close of business on the business day next preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Preferred Stock.

(c) Any holder of Series A-1 Preferred Stock may convert all or any portion of the shares of Series A-1 Preferred Stock (including any fraction of a share) held by such holder into an identical number of shares of Series A Preferred Stock only upon the occurrence of either (i) any sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Corporation or any consolidation or merger involving the Corporation in which the Corporation is not the surviving entity, or any reclassification or other change of any stock, or any recapitalization, or any dissolution, liquidation or winding up of the Corporation, (ii) any sale, transfer or other conveyance of Series A-1 Preferred Stock pursuant to any co-sale rights granted to holders of Series A-1 Preferred Stock in any agreement among stockholders of the Corporation, or (iii) any issuance by the Corporation of additional Equity Securities (defined below) such that the total number of all Equity Securities (defined below) having voting rights held by such holder of Series A Preferred Stock (together with the number of shares of Series A-1 Preferred Stock to be converted by such holder into shares of Series A Preferred Stock following such issuance) shall constitute less than twenty percent (20%) of all of the Corporation's issued and outstanding Equity Securities having voting rights (including such converted shares of Series A-1 Preferred Stock). "Equity Security" means any stock or similar security, including without limitation, securities containing equity features and securities containing profit participation features, or any security convertible or exchangeable, with or without consideration, into or for any stock or similar security, or any security carrying any warrant or right to subscribe for or purchase any stock or similar security, or any such warrant or right.

(ii) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the market price as determined in good faith by the Corporation's Board of Directors of one share of the Corporation's Common Stock on the Conversion Date, as such term is defined in Section D(iii)(a) below.

(iii) Mechanics of Conversion.

(a) In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate

or certificates for such shares of Preferred Stock, at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued and the number of shares of Preferred Stock to be converted. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent or by the Corporation (if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date") and the conversion shall be deemed effective as of the close of business on the Conversion Date. The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(b) The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non assessable shares of Common Stock at such adjusted Conversion Price.

(c) Upon any such conversion, no adjustment to the Conversion Price shall be made for any accumulated but unpaid dividends on the Preferred Stock surrendered for conversion or to the number of shares of Common Stock delivered upon conversion, and all rights of the holder of said Preferred Stock to receive such accumulated dividends shall be deemed released and terminated.

(d) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate at the close of business on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor.

(iv) Adjustments to Conversion Price for Diluting Issues:

(a) Special Definitions. For purposes of this Section iv(a), the following definitions shall apply:

(A) "Option" shall mean any rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities, excluding rights, warrants and options granted on or after the Original Issue Date to employees, officers, directors or consultants of the Corporation or any subsidiary thereof pursuant to an option plan or agreement adopted by the Board of Directors to acquire up to a maximum of 570,278 shares of Common Stock (subject to appropriate adjustment for any stock dividend, stock split, combination or other similar recapitalization affecting such shares and including any options which may replace options forfeited or expiring pursuant to such plan).

(B) "Original Issue Date" shall mean the date on which any shares of Preferred Stock are first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section D(iv)(b) below, deemed to be issued) by the corporation after the Original Issue Date, other than shares of Common Stock issued or issuable or deemed issued:

- (I) upon conversion of shares of Preferred Stock;
- (II) as a dividend or distribution on Preferred Stock;
- (III) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock;
- (IV) upon the exercise of options excluded from the definition of "Option" in Section D(iv)(A);
- (V) in replacement of shares forfeited by the holders pursuant to an applicable vesting schedule; or
- (VI) in connection with the acquisition by the Corporation of another business if such acquisition has been approved by the Board of Directors.

(b) Issue of Options and Convertible Securities Deemed Issue of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall, except as otherwise provided in Section D(iv)(a)(D), be deemed to be Additional Shares of Common Stock issued as of the time of such issue provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, except as provided in this Section D(iv), for any increase or decrease in the consideration payable to the Corporation, or in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Prices computed upon the original issue thereof, and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) no recomputation pursuant to clause (B) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such recomputation date; and

(D) upon the expiration or termination of any unexercised Option or repayment or redemption of any Convertible Security, the Conversion Price shall be readjusted, and the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option shall not be deemed issued for the purpose of such readjustment.

(c) Adjustment of Conversion Prices Upon Issuance of Additional Shares of Common Stock. In the event the Corporation, at any time after the Original Issue Date, shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section D(iv)(b)), without consideration or for a consideration (as determined in Section D(iv)(d)) per share issued

or deemed to be issued under Section D(iv)(b) less than the Conversion Price in effect on the date immediately prior to such issue, then and in such event, the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Conversion Price 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 Additional Shares of Common Stock so issued would purchase at the 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 Additional Shares of Common 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 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, but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Preferred Stock, Convertible Securities, or outstanding options, warrants or other rights for the purchase of shares of stock or convertible securities, solely as a result of the adjustment of the Conversion Price (or other conversion ratios) resulting from the issuance of the Additional Shares of Common Stock causing the adjustment in question.

(d) Determination of Consideration. For purposes of this Section D (iv), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Property: Such consideration shall:

(I) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(II) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration received, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section D (iv) (b), relating to Options and Convertible Securities, shall be determined by dividing

(I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustment for Stock Splits, Stock Dividends, Subdivisions, Combinations or Consolidation of Common Stock. In the event the outstanding shares of Common Stock shall be split, subdivided, combined or consolidated, by reclassification or otherwise, into a greater or lesser number of shares of Common Stock, and in the event that the Corporation shall issue shares of Common Stock by way of a stock dividend or other distribution to the holders of Common Stock, the Conversion Price in effect immediately prior to such split, subdivision, stock dividend, combination or consolidation shall, concurrently with the effectiveness of such split, subdivision, stock dividend, combination or consolidation, be increased or decreased proportionately.

(f) Capital Reorganization or Reclassification. If the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for in subsection (e) above, or the sale of all or substantially all of the Corporation's properties and assets to any other person), then and in each such event the holder of each share of Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

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

(vi) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issuance 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 the Corporation but will at all times in good faith assist in the carrying out of all provisions of this Section D and in the taking of all such actions as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series A Preferred Stock and Series A-1 Preferred Stock against impairment.

(vii) Merger or Sale of Assets. If at any time or from time to time there shall be a merger or consolidation of the Corporation with or into another corporation, or the sale of all or substantially all of the Corporation's properties and assets to any other person, other than a Qualifying Transaction, then, as a part of such merger, consolidation or sale, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock, the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such merger, consolidation or sale, to which a holder of Common Stock issuable upon conversion would have been entitled on such merger, consolidation, or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section D with respect to the rights of the holders of the Preferred Stock after the merger, consolidation or sale to the end that the provisions of this Section D (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event in as nearly equivalent a manner as may be practicable.

(viii) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock, based on the then effective Conversion Price (A) at any time upon the affirmative election of the holders of at least two-thirds of the outstanding shares of Preferred Stock, or (B) immediately upon the Closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation in which the gross cash proceeds to the Corporation (before underwriting discounts, commissions

and fees) exceed \$20,000,000 at a pre-money valuation in excess of \$90,000,000. Upon any such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section B.

E. Redemption of Series A and Series A-1 Preferred Stock.

(i) Each holder of the Series A Preferred Stock and the Series A-1 Preferred Stock may elect to require that the Corporation redeem all (but not less than all) shares of such series of Preferred Stock owned by such holder on the fifth anniversary of the Original Issue Date (the "Series A Redemption Date") in accordance with the terms of this Section E (a "Series A Redemption") at the applicable Redemption Price (as set forth in this Section).

(ii) Notice of any required redemption shall be delivered to the Corporation by such requesting holders not less than 90 nor more than 180 days prior to the Series A Redemption Date and shall state the number of each series of Preferred Stock to be so redeemed.

(iii) The Redemption Price shall be equal to 125% of the original purchase price per share of Series A and Series A-1 Preferred Stock, respectively, together with all accrued but unpaid dividends for any share of Series A-Preferred Stock or Series A-1 Preferred Stock, respectively, (as adjusted for any combinations, consolidations, or stock distributions or stock dividends with respect to such shares).

(iv) If notice has been delivered in accordance with Section E(ii) and on the applicable redemption date all funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds in trust for the pro rata benefit of the holders of the shares to be so redeemed, so as to be, and to continue to be available therefor, then, from and after such redemption date, said shares shall no longer be deemed to be outstanding and shall not have the status of shares of Series A Preferred Stock and Series A-1 Preferred Stock, as applicable, and all rights of holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the applicable Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any shares so redeemed (properly endorsed or assigned for transfer and together with such other documentation as the Corporation may reasonably request), such shares shall be redeemed by the Corporation by paying the Redemption Price to the applicable Preferred Stockholder as follows:

(a) At least 50% of the Redemption Price for the Redemption Shares shall be paid in cash within 60 days following delivery of the Redemption Notice; and

(b) The balance of the Redemption Price shall be paid by the execution and delivery by the Corporation of a promissory note dated as of the date of the aforementioned cash payment, providing for the payment of principal one year after the date thereof.

(v) Any funds deposited with a bank or trust company for the purpose of redeeming Series A Preferred Stock or Series A-1 Preferred Stock shall be irrevocable except that:

(a) the Corporation shall be entitled to receive from such bank or trust company the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

(b) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series A Preferred Stock and Series A-1 Preferred Stock entitled thereto at the expiration of two years from the applicable redemption date shall be repaid, together with any interest or other earnings earned thereon to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(vi) No Series A Preferred Stock or Series A-1 Preferred Stock may be redeemed except with funds legally available for such purpose.

(vii) If the Corporation fails to complete a Series A Redemption as required under Section E(i), the Redemption Price will increase to 150% of the original purchase price per share of Series A Preferred Stock or Series A-1 Preferred Stock, together with all accrued but unpaid dividends for any share of Series A-Preferred Stock or Series A-1 Preferred Stock (as adjusted for any combinations, consolidations, or stock distributions or stock dividends with respect to such shares).

(viii) Definitions. As used in this Section 5, the following terms shall have the following meanings.

(a) "Affiliate" with respect to any Person shall mean any Person that directly or indirectly controls, or is under common control with, or is controlled by such Person. As used in this definition, "control" (including with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person (whether through ownership of securities or partnerships or other ownership interests, by contract or otherwise).

(b) "Person" shall mean an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

FIFTH: The name and mailing address of the sole incorporators are as follows:

<u>Name</u>	<u>Mailing Address</u>
William B. Asher, Jr., Esq.	Testa, Hurwitz & Thibeault, LLP

125 High Street
Boston, MA 02110

SIXTH: The Board of Directors is authorized to make, alter or repeal the By-Laws of the Corporation.

SEVENTH: Any one or more directors may be removed, with or without cause, by the vote or written consent of the holders of a majority of the issued and outstanding shares of stock of the Corporation entitled to be voted at an election of directors.

EIGHTH: Meetings of stockholders shall be held at such place, within or without the State of Delaware, as may be designated by or in the manner provided in the By-Laws, or, if not so designated, at the registered office of the Corporation in the State of Delaware. Elections of directors need not be by written ballot unless and to the extent that the By-Laws so provide. The books of the Corporation may be kept at such place within or without the State of Delaware as the By-Laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

NINTH: The Corporation reserves the right to amend, alter or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights of stockholders herein are subject to this reservation.

TENTH: To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that, to the extent provided by applicable law, the foregoing shall not eliminate the liability of a director (i) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of Title 8 of the Delaware Code or (iv) for any transaction from which such director derived an improper personal benefit. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

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