



CORDATION FORM CO

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(Rev. 6-93)  
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TM05/REV03

02-22-2000

RADEMARKS



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Tab settings

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

1. Name of conveying party(ies):

- Individual(s)
- General Partnership
- Corporation-State **Neuroperfusion, Inc. - CA**
- Other

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Association
- Limited Partnership
- Merger
- Change of Name

Execution Date: \_\_\_\_\_

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

Name: **Alsius Corporation**

Internal Address: \_\_\_\_\_

Street Address: **15770 Laguna Canyon Road, Suite 150**

City: **Irvine** State: **CA** ZIP: **92618**

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State **California**
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

75/508,234  
75/569,597  
75/604,187

Additional numbers

B. Trademark Registration No.(s)

Yes  No

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

Name: **Arlyn L. Alonzo, Esq.**

Internal Address: \_\_\_\_\_

Refund Ref:  
03/14/2000 DCORTES 0000091082

CHECK Refund Total: \$30.00

Street Address: **15770 Laguna Canyon Road, Suite 150**

City: **Irvine** State: **CA** ZIP: **92618**

6. Total number of applications and registrations involved:.....

3

7. Total fee (37 CFR 3.41):.....\$ **120.00**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

Charge underpayment & credit overpayment to 501167

03/14/2000 DCORTES 00000130 75508234

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01 FC:481 40.00 OP  
02 FC:482 50.00 OP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

**Arlyn L Alonzo**

Name of Person Signing

*Arlyn L Alonzo*

Signature

**2/18/00**

Date

Total number of pages including cover sheet, attachments, and TRADEMARK

REEL: 002036 FRAME: 0325

# State of California

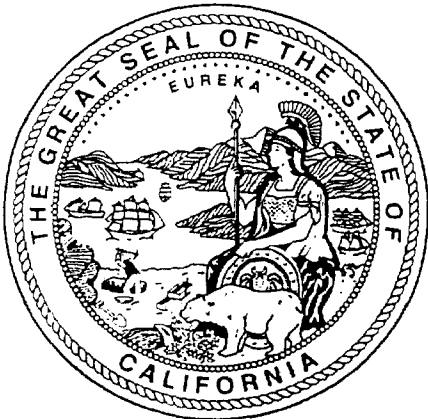


SECRETARY OF STATE



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

That the attached transcript of 14 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

NOV 16 1998

*Bill Jones*

Secretary of State

ENDORSED-FILED  
IN THE OFFICE OF THE  
SECRETARY OF STATE  
OF THE STATE OF CALIFORNIA

NOV 12 1998

DILL JONES, SECRETARY OF STATE

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**

**OF**

**NEUROPERFUSION, INC.**

The undersigned, William Worthen and Christopher Ozburn, hereby certify that:

A. They are the President and the Assistant Secretary, respectively, of Neuroperfusion, Inc., a California corporation.

B. The Articles of Incorporation of this corporation are amended and restated in their entirety to read as follows:

**ARTICLE I**

The name of this corporation is Alsius 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**

This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is thirty-eight million one hundred eight thousand nine hundred thirty-two (38,108,932) shares, without par value, of which twenty-five million (25,000,000) shares are Common Stock and thirteen million one hundred eight thousand nine hundred thirty-two (13,108,932) shares are Preferred Stock, of which one million six hundred forty-six thousand six hundred thirty-six (1,646,636) shares shall be designated Series A Preferred Stock, one million one hundred sixty-one thousand forty-six (1,161,046) shares shall be designated Series B Preferred Stock, two million six hundred one thousand two hundred fifty (2,601,250) shares shall be designated Series C-1 Preferred Stock and seven million seven hundred thousand (7,700,000) shares shall be designated Series C-2 Preferred Stock.

## ARTICLE IV

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

### 1. Dividends.

(a) The holders of Series A, Series B, Series C-1 and Series C-2 Preferred Stock shall be entitled, when and if declared by the board of directors of the corporation, to dividends out of assets of the corporation legally available therefor at the rate of \$.0175, \$.0800, \$.0800 and \$.1040 per share per annum, respectively (as adjusted for any stock dividends, combinations or splits with respect to such shares). Dividends on the Preferred Stock shall be payable in preference and prior to any payment of any dividend on the Common Stock of the corporation.

(b) Each share of Preferred Stock shall rank on a parity with each other share of Preferred Stock, irrespective of series, with respect to dividends as to the respective rates fixed for such series, and no dividends shall be declared or paid or set apart for payment on any series of Preferred Stock unless at the same time a dividend, bearing the same proportion to the applicable dividend rate, shall also be declared or paid or set apart for payment, as the case may be, on each other series of Preferred Stock then outstanding.

(c) Thereafter, the holders of Common Stock and Preferred Stock shall be entitled, when and if declared by the board of directors of the corporation, to dividends out of assets of the corporation legally available therefor; provided, however, that no such dividend may be declared or paid on any shares of Common Stock or Preferred Stock unless at the same time an equivalent dividend is declared or paid on all outstanding shares of Common Stock and Preferred Stock; and provided, further, that the dividend on any series of any Preferred Stock shall be payable at the same rate per share as would be payable on the shares of Common Stock or other securities into which such series of Preferred Stock is convertible immediately prior to the record date of such dividend. The right to dividends on shares of the Common Stock and Preferred Stock shall not be cumulative, and no right shall accrue to holders of Common Stock or Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior period.

### 2. Liquidation Preference.

(a) Preference. In the event of any liquidation, dissolution or winding up of the corporation, either voluntarily or involuntarily, the holders of Series A, Series B, Series C-1 and Series C-2 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of Common Stock of the corporation, an amount equal to \$0.225, \$1.00, \$1.00 and \$1.30 per share, respectively (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus a further amount equal to any dividends declared but unpaid on such shares.

If upon such liquidation, dissolution or winding up of the corporation, the assets of the corporation are insufficient to provide for the cash payment described above to the holders of Preferred Stock, such assets as are available shall be paid to the holders of Preferred Stock on a pro rata basis in proportion to the product of the liquidation preference of each such share and the number of such shares owned by each such holder.

(b) Distributions to Common Stock, Series C-1 and Series C-2 Preferred Stock.

After the payment or setting apart of payment to the holders of the Preferred Stock of the preferential amounts so payable to them, the holders of Common Stock and the holders of Series C-1 and Series C-2 Preferred Stock shall be entitled to receive the remaining assets of the corporation pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series C-1 and Series C-2 Preferred Stock).

(c) Consolidation or Merger. For purposes of this Paragraph 2, (i) any acquisition of the corporation by means of merger or other form of corporate reorganization in which the shareholders of the corporation do not own a majority of the voting securities of the surviving corporation or (ii) a sale of all or substantially all of the assets of the corporation, whether in one transaction or a series of related transactions, shall be treated as a liquidation, dissolution or winding up of the corporation and shall entitle the holders of Preferred Stock and Common Stock to receive cash, securities or other property as specified in Paragraphs 2(a) and (b) above.

(d) Noncash Distributions. If any of the assets of the corporation are to be distributed other than in cash under this paragraph 2 or for any purpose, then the board of directors of the corporation shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of Preferred Stock. The corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of shares of Preferred Stock of the appraiser's valuation.

(e) Repurchase of Shares. In connection with repurchases by this corporation of its Common Stock, pursuant to its agreements with certain of the holders thereof. Sections 502 and 503 of the California General Corporation Law shall not apply in all or in part with respect to such repurchases.

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

(a) Right To Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the corporation or any transfer agent for the Preferred Stock. Each share of each series of Preferred Stock shall be convertible into the number of fully paid and nonassessable shares of Common Stock which results from dividing the Conversion Price (as hereinafter defined) per share in effect for such series at the time of conversion into the per share Conversion Value (as hereinafter defined) of such series. The initial Conversion Price per share of Series A, Series B, Series C-1 and Series C-2 Preferred Stock, shall be \$0.225, \$1.00, \$1.00 and \$1.30, respectively, and the per share Conversion

Value of Series A, Series B, Series C-1 and Series C-2 Preferred Stock shall be \$0.225, \$1.00, \$1.00 and \$1.30, respectively. The Conversion Price of each series shall be subject to adjustment from time to time as provided in this paragraph 3. The number of shares of Common Stock into which a series of Preferred Stock is convertible is hereinafter referred to as the "Conversion Rate" of such series.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at its then effective Conversion Rate immediately upon the closing of an underwritten public offering pursuant to an effective registration statement 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 to an employee benefit plan of the corporation, the aggregate gross proceeds to the corporation of which exceed \$7,500,000 and the per share price to the public of which is at least \$5.00 (adjusted for any stock splits, stock dividends or recapitalizations), prior to deduction of underwriting commissions and offering expenses.

(c) Mechanics of Conversion.

(i) Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for the Preferred Stock and shall give written notice to the corporation at such office that he elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to paragraph 3(b) hereof). The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. Such conversion shall be deemed to have been made immediately before the close of business on the date of such surrender of the shares of Preferred Stock to be converted (except that in the case of an automatic conversion pursuant to paragraph 3(b) such conversion shall be deemed to have been made immediately before the closing of the offering referred to in paragraph 3(b)), 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.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Fractional Shares. In lieu of any fractional shares to which the holder of Preferred Stock would otherwise be entitled, the corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of such series of Preferred Stock as determined by the board of directors of the corporation. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock of each

holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(e) Adjustment of Conversion Price. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If the number of shares of Common Stock outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split up of shares of Common Stock, then, on the date such payment is made or such change is effective, the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of the Preferred Stock shall be increased in proportion to such increase of outstanding shares.

(ii) If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common Stock, then, on the effective date of such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of the Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(iii) In case the corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than Common Stock for which the Conversion Price has been adjusted pursuant to Section 3(e)(i) above), stock or other securities of other persons, evidences of indebtedness issued by the corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the corporation convertible into or exchangeable for Common Stock), then, in each such case, the holders of Preferred Stock shall, concurrent with the distribution to holders of Common Stock, receive a like distribution based upon the number of shares of Common Stock into which the Preferred Stock is then convertible.

(iv) In case, at any time after the date hereof, of any capital reorganization, or any reclassification of the stock of the corporation (other than as a result of a stock dividend or subdivision, split up or combination of shares), or the consolidation or merger of the corporation with or into another person (other than a consolidation or merger in which the corporation is the continuing entity and which does not result in any change in the Common Stock), or of the sale or other disposition of all or substantially all the properties and assets of the corporation, the shares of Preferred Stock shall, after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition he had converted his shares of Preferred Stock into Common Stock. The provisions of this clause (iv) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(v) All calculations under this paragraph 3(e) shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(f) Additional Adjustments to Series C-1 and Series C-2 Conversion Price.

(i) Special Definitions. For purposes of this Section 3(f), the following definitions apply:

(A) "Options" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (defined below).

(B) "Original Issue Date" shall mean the date on which a share of Series C-1 or Series C-2 Preferred Stock was first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock and Series A, Series B, Series C-1 and Series C-2 Preferred Stock) or other securities 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 3(f)(iii), deemed to be issued) by the corporation after the Original Issue Date, other than shares of Common Stock (or warrants or options to purchase Common Stock) issued or issuable:

(1) Upon conversion of shares of Series A, Series B, Series C-1 or Series C-2 Preferred Stock;

(2) To employees, directors, consultants or advisors under stock option, stock bonus or stock purchase plans or agreements or similar plans or agreements approved by the Board of Directors or an authorized committee thereof; provided, however, that this Section 3(f)(i)(D)(2) shall only apply to an aggregate of three million six hundred seventy-five thousand eight hundred eighty-five (3,675,885) shares (as adjusted for any stock dividends, combinations or splits and net of any repurchases of shares or cancellations or expirations of options) issued (or deemed to be issued) to such employees, directors, consultants or advisors whether prior or subsequent to the sale of Preferred Stock;

(3) As a dividend or distribution on Series A, Series B, Series C-1 and Series C-2 Preferred Stock; or

(4) For which adjustment of the Series C-1 or Series C-2 Preferred Stock Conversion Rate, respectively, is made pursuant to Section 3(e).

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price for Series C-1 or Series C-2 Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock



unless the consideration per share (determined pursuant to Section 3(f)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the corporation is less than the Conversion Price for such series in effect on the date of, and immediately prior to, such issue (provided, however, that no such adjustment of the Conversion Price shall affect Common Stock previously issued upon conversion of the Preferred Stock).

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock 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 be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustments 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, for any increase or decrease in the consideration payable to the corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), 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) Upon the expiration of any such Options or the termination of any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(1) In the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the corporation upon such exercise, or for the issue of all such

Convertible Securities, plus the additional consideration, if any, actually received by the corporation upon such conversion or exchange; and

(2) In the case of Options for Convertible Securities only the Additional Shares of Common Stock, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the corporation (determined pursuant to Section 3(f)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised.

(D) No readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Price to an amount which exceeds the Conversion Price on the original adjustment date (before the adjustment was made).

(E) In the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of each of such Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above.

(F) If any such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and shall instead be made on the actual date of issuance, if any.

(iv) Adjustment of Conversion Price 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 3(f)(iii)) without consideration or for a consideration per share less than the Conversion Price for the Series C-1 or Series C-2 Preferred Stock, respectively, in effect on the date of and immediately prior to such issue, then the Conversion Price for each series shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price for such series 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 such Conversion Price in effect for such series 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 (A) shall be calculated as if all shares of Series A, Series B, Series C-1 and Series C-2 Preferred Stock had been fully converted into shares of Common Stock immediately prior to such issuance and (B) shall not include shares deemed to be issued as a result of any adjustment in Conversion Price resulting from the issuance of the Additional Shares.

(v) Determination of Consideration. For purposes of this Section 3(f), the consideration received by the corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property. Such consideration shall:

(1) Insofar as it consists of cash, be computed at the aggregate amount of cash received by the corporation;

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

(3) 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 so received, computed as provided in clauses (1) and (2) above, 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 3(f)(iii), relating to Options and Convertible Securities shall be determined by dividing:

(1) 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 designed to protect against dilution) 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

(2) The maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(vi) Calculations; No Adjustments. All calculations under this paragraph 3(f) shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be. Notwithstanding anything else set forth herein, no adjustments shall be made to the Series A or Series B Preferred Stock Conversion Price pursuant to this paragraph 3(f).

(g) Minimal Adjustments. No adjustment in the Conversion Price need be made if such adjustment would result in a change in the Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the

time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in the Conversion Price.

(h) No Impairment. The corporation will not, 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 the corporation, but will at all times in good faith assist in the carrying out of all the provisions of this paragraph 3 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 the Preferred Stock against impairment. This provision shall not restrict the corporation's right to amend its Articles of Incorporation with the requisite shareholder consent.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Rate pursuant to this paragraph 3, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation shall, upon written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Rate at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(j) Notices of Record Date. In the event of any taking by the 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 (other than a cash 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, the corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution or right, and the amount and character of such dividend, distribution or right.

(k) Reservation of Stock Issuable upon Conversion. The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the 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 the Preferred Stock, the corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(l) Notices. Any notice required by the provisions of this paragraph 3 to be given to the holder of shares of the Preferred Stock shall be deemed given if deposited in the United States

mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the corporation.

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

4. Voting Rights.

(a) General 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. The holder of each share of Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the corporation and, except as set forth below, 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) Designation of Directors.

(i) The Board of Directors of the corporation shall consist of seven (7) members. The holders of the Series C-1 and Series C-2 Preferred Stock shall be entitled, as a group voting as a separate class (the "Preferred Class"), to elect three (3) members of the Board of Directors of the corporation. The holders of the Common Stock shall be entitled, as a group voting as a separate class (the "Common Class"), to elect one (1) member of the Board of Directors of the corporation. All members of the Board of Directors not required to be elected by the holders of the Series C-1 and C-2 Preferred Stock or by the holders of the Common Stock voting separately shall be elected by the holders of the Common Stock and the holders of the Preferred Stock, voting together as a class.

(ii) In the case of any vacancy in the office of a director occurring among the directors elected by the Preferred Class or Common Class pursuant to subparagraph (i) of paragraph (b) of Paragraph 4 hereof, the holders of a majority of the shares of that class may elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the Preferred Class or Common Class or any director so elected as provided in the preceding sentence hereof, may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative

vote of the holders of a majority of the outstanding shares of the Preferred Class or Common Class, as the case may be.

5. Protective Provisions.

(a) Preferred Stock. So long as any Preferred Stock shall be outstanding, the corporation shall not without first obtaining the approval of the holders of more than fifty percent (50%) of the outstanding Preferred Stock:

(i) Increase or decrease the authorized number of shares of Preferred Stock or any series thereof, other than an increase as provided in either subdivision (b) of Section 405 or subdivision 902 of the California General Corporation Law;

(ii) Effect an exchange, reclassification or cancellation of shares of any class or series of stock of the corporation;

(iii) Alter or change the rights, preferences, restrictions or privileges of any series of Preferred Stock in an adverse manner;

(iv) Redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock otherwise than by conversion in accordance with Section 3 hereof;

(v) Redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any of the Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the corporation or any subsidiary pursuant to agreements under which the corporation has the option to repurchase such shares at cost or at cost plus interest upon the occurrence of certain events, such as the termination of employment;

(vi) Authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) senior or equal to any series of Preferred Stock as to dividend rights or redemption rights or liquidation preferences;

(vii) Effect 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, or any reclassification or other change of any stock, or any recapitalization of the corporation; or

(viii) Do any act or thing which would result in taxation of the holders of Preferred Stock under section 305 of the Internal Revenue Code of 1986, as amended.

(b) Residual Rights. Except as provided otherwise by applicable law, all rights accruing to the outstanding shares of the corporation not expressly provided for to the contrary herein shall be vested with the Common Stock.

## ARTICLE V

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

2. Indemnification of Corporate Agents. This corporation is authorized to indemnify the directors, officers and agents of the corporation to the fullest extent permissible under California law.

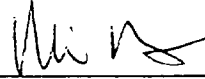
3. Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article V shall not adversely affect any right of indemnification or limitation of liability of an agent of this corporation relating to acts or omissions occurring prior to such repeal or modification.

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 California Corporations Code. The total number of outstanding shares of the corporation is 2,118,952 shares of Common Stock, 1,646,636 shares of Series A Preferred Stock, 1,161,046 shares of Series B Preferred Stock, 2,601,250 shares of Series C-1 Preferred Stock and 2,792,310 shares of Series C-2 Preferred Stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was (i) a majority of the outstanding shares of Common Stock and (ii) a majority of the outstanding shares of Series A, Series B, Series C-1 and Series C-2 Preferred Stock, voting as a separate class.

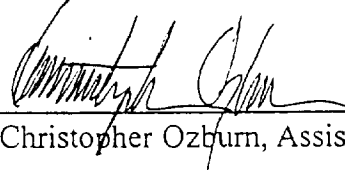
We further declare under penalty of perjury that the matters set forth in the foregoing Certificate are true and correct of our own knowledge.

Executed at Irvine, California, this 11th day of November, 1998.



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William Worthen, President



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Christopher Ozburn, Assistant Secretary

