

**PATENT ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	Amended and Restated Articles of Incorporation
<b>CONVEYING PARTY DATA</b>	
<b>Name</b>	<b>Execution Date</b>
ULSI SYSTEMS, INC.	07/08/1998
<b>RECEIVING PARTY DATA</b>	
<b>Name:</b>	APACHE SYSTEMS, INC.
<b>Street Address:</b>	58 DAGGETT DRIVE
<b>City:</b>	SAN JOSE
<b>State/Country:</b>	CALIFORNIA
<b>Postal Code:</b>	95134
<b>PROPERTY NUMBERS Total: 1</b>	
<b>Property Type</b>	<b>Number</b>
Patent Number:	6023745
<b>CORRESPONDENCE DATA</b>	
<b>Fax Number:</b>	(512)853-8801
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
<b>Phone:</b>	5128538800
<b>Email:</b>	cacker@intprop.com
<b>Correspondent Name:</b>	Meyertons, Hood, Kivlin, Kowert & Goetzel
<b>Address Line 1:</b>	700 Lavaca
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<b>Address Line 4:</b>	Austin, TEXAS 78701
<b>ATTORNEY DOCKET NUMBER:</b>	5957-41800
<b>NAME OF SUBMITTER:</b>	Dean M. Munyon
<b>Total Attachments: 14</b>	
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# State of California

## SECRETARY OF STATE

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

That the attached transcript of 13 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

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

OCT 16 2001



*Bill Jones*  
Secretary of State

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FIFTH AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
ULSI SYSTEMS, INC.

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

JUL 10 1998

*[Signature]*  
BILL JONES, Secretary of State

Bo Ericsson and Charles E. Crane certify that:

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

ARTICLE I.

The name of this Corporation is Apache Systems, Inc.

ARTICLE II.

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

ARTICLE III.

Section 1. Limitation of Director's Liability. The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permitted under California law.

Section 2. Indemnification of Corporate Agents. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its shareholders through Bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

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Section 3. Repeal and Modification. Any repeal or modification of the foregoing provisions of this Article III by the shareholders of the Corporation shall not adversely affect any right or protection of a director, officer or agent of the Corporation existing at the time of such repeal or modification.

#### ARTICLE IV.

This Corporation is authorized to issue two classes of shares of stock, designated "Common Stock" and "Preferred Stock." The total number of shares that this Corporation is authorized to issue is 139,222,299 shares. The number of shares of Common Stock authorized is 80,000,000 shares with no par value. The number of shares of Preferred Stock authorized is 59,222,299 shares with no par value.

Section 1. Title of Series and Number of Shares. There shall be seven series of Preferred Stock, designated and known as Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, Series B-1 Preferred Stock, Series B-2 Preferred Stock and Series C Preferred Stock. The number of shares constituting the Series A-1 Preferred Stock (the "Series A-1 Preferred Stock") shall be 13,572,000 shares. The number of shares constituting the Series A-2 Preferred Stock (the "Series A-2 Preferred Stock") shall be 3,803,998 shares. The number of shares constituting the Series A-3 Preferred Stock (the "Series A-3 Preferred Stock") shall be 552,000 shares. The number of shares constituting the Series A-4 Preferred Stock (the "Series A-4 Preferred Stock") shall be 300,000 shares. The number of shares constituting the Series B-1 Preferred Stock (the "Series B-1 Preferred Stock") shall be 2,160,000 shares. The number of shares constituting the Series B-2 Preferred Stock (the "Series B-2 Preferred Stock") shall be 10,944,118 shares. The number of shares constituting the Series C Preferred Stock (the "Series C Preferred Stock") shall be 27,890,183. The Series A-1 Preferred, Series A-2 Preferred Stock, Series A-3 Preferred Stock and Series A-4 Preferred Stock are referred to herein collectively as the "Series A Preferred Stock" and the Series B-1 Preferred Stock and the Series B-2 Preferred Stock are referred to herein collectively as the "Series B Preferred Stock." The Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock are referred to herein collectively as the "Preferred Stock."

#### Section 2. Dividend Rights of Preferred Stock.

(a) The holders of outstanding shares of Series C Preferred Stock shall be entitled to receive in any fiscal year, when and as declared by the Board of Directors, out of funds then legally available and subject to the provisions of this Section 2, a dividend of \$0.018 per share (the "Series C Preferred Dividend"). The Series C Preferred Dividend is payable in preference and priority to payment of any dividend on any other series of Preferred Stock or the Common Stock, when and as declared by the Board of Directors.

(b) After payment of the Series C Preferred Dividend, the holders of outstanding shares of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive in any

fiscal year, when and as declared by the Board of Directors, out of funds then legally available and subject to the provisions of this Section 2, a dividend of (i) with respect to the Series A-1 Preferred Stock, \$0.0128 per share (the "Series A-1 Preferred Dividend"), (ii) with respect to the Series A-2 Preferred Stock, \$0.0235 per share (the "Series A-2 Preferred Dividend"), (iii) with respect to the Series A-3 Preferred Stock, \$0.267 per share (the "Series A-3 Preferred Dividend"), (iv) with respect to the Series A-4 Preferred Stock, \$0.04 per share (the "Series A-4 Preferred Dividend"), and (v) with respect to the Series B Preferred Stock, \$0.04 per share (the "Series B Preferred Dividend"). The Series B Preferred Dividend is payable in preference and priority to payment of any dividend on the Series A Preferred Stock or on the Common Stock, when and as declared by the Board of Directors. The Series A-4 Preferred Dividend is payable in preference and priority to payment of any dividend on the Series A-3 Preferred Stock, Series A-2 Preferred Stock, Series A-1 Preferred Stock and Common Stock, when and as declared by the Board of Directors. The Series A-3 Preferred Dividend is payable in preference and priority to payment of any dividend on the Series A-2 Preferred Stock, Series A-1 Preferred Stock, and Common Stock, when and as declared by the Board of Directors. The Series A-2 Preferred Dividend is payable in preference and priority to payment of any dividend on the Series A-1 Preferred Stock and Common Stock, when and as declared by the Board of Directors. The Series A-1 Preferred Dividend is payable in preference and priority to any payment of any dividend on the Common Stock, when and as declared by the Board of Directors.

(c) The right to such dividends on the Preferred Stock shall not be cumulative, and no right shall accrue to holders of the Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any prior year, nor shall any undeclared or unpaid dividend bear or accrue interest. Dividends may be declared and paid quarterly or otherwise as determined by the Board of Directors from time to time. Dividends may be declared and paid on the Common Stock in any fiscal year of the Corporation only if dividends shall have been paid on or declared and set apart upon all outstanding shares of the Preferred Stock at the rates set forth above for each quarter or other period of such fiscal year of the Corporation, including the quarter or other period in which such dividends on the Common Stock are declared.

### Section 3. Voting Rights.

(a) Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such holder's shares of Preferred Stock could be converted on the record date for the vote or consent of shareholders and 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 shall vote with holders of the Common Stock and upon any matter submitted to a vote of shareholders, except those matters required by law to be submitted to a class or series vote and except as otherwise provided in Sections 3(a), 3(b), 3(c), 3(d) and 6(a) hereof. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded down to the nearest whole number.

(b) The number of directors of the Corporation shall be set forth in the Corporation's Bylaws. The holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, each voting as a separate class, shall each be entitled to elect one (1) member of the Company's Board of Directors.

(c) Except as otherwise set forth in these Articles of Incorporation, any additional directors shall be elected by the holders of Preferred Stock and Common Stock voting together as one class.

(d) In the case of any vacancy in the office of a director elected pursuant to Section 3(b) hereof, the shareholders entitled pursuant to Section 3(b) hereof to elect the former director or directors whose place or places shall be vacant, voting as a separate class, may elect a successor or successors to hold the office for the unexpired term of the former director or directors whose place or places shall be vacant. In the case of any vacancy in the office of a director elected pursuant to Section 3(c) hereof, either the remaining directors, if any, may appoint, or the holders of Preferred Stock and Common Stock voting together as one class may elect, a successor or successors to hold the office for the unexpired term of the former director or directors whose place or places shall be vacant. Any director who shall have been elected may be removed during the aforesaid term of office only by the vote of the shareholders entitled pursuant to Section 3(b) or 3(c) hereof to elect the former director creating such vacancy, provided that the shares voted against removal would not be sufficient to elect the director with cumulative voting.

(e) Sections 3(b), 3(c) and 3(d) above shall be void and of no effect thereafter upon the occurrence of any of the following events:

(i) the consummation of the Corporation's Initial Registered Public Offering (as defined in Section 4(b)(i) hereof); and

(ii) upon the distribution to the shareholders pursuant to Section 5 of the net proceeds of the sale of all or substantially all the assets of the Corporation.

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

(a) Right to Convert. Each share of Series A Preferred Stock, Series B Preferred Stock and Series C 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 with respect to (i) the Series A-1 Preferred Stock, \$0.16; (ii) the Series A-2 Preferred Stock, \$0.29 $\frac{1}{2}$ ; (iii) the Series A-3 Preferred Stock, \$0.33 $\frac{1}{2}$ ; (iv) the Series A-4 Preferred Stock, \$0.50; (v) the Series B-1 Preferred Stock, \$0.50; (vi) the Series B-2 Preferred Stock, \$0.50 and (vii) the Series C Preferred Stock, \$0.18, by the Applicable Conversion Price, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of a series of Preferred

Stock (such price with respect to such series of Preferred Stock to which it applies being hereinafter referred to as the "Applicable Conversion Price") shall initially be with respect to (i) the Series A-1 Preferred Stock, \$0.16; (ii) the Series A-2 Preferred Stock, \$0.29½; (iii) the Series A-3 Preferred Stock, \$0.33½; (iv) the Series A-4 Preferred Stock, \$0.50; (v) the Series B-1 Preferred Stock, \$0.50; (vi) the Series B-2 Preferred Stock, \$0.50 and (vii) the Series C Preferred Stock, \$0.18, in each case per share of Common Stock. Such initial Applicable Conversion Price shall be adjusted as hereinafter provided.

(b) Automatic Conversion. Each share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (as set forth below) shall automatically be converted into such number of fully paid and nonassessable shares of Common Stock, determined as hereinafter provided, in effect on the date of the occurrence of the earlier to occur of the following events:

(i) immediately prior to the consummation of the Corporation's initial firm-commitment underwritten public offering under the Securities Act of 1933, as amended (the "Securities Act"), provided that such offering is made at \$1.00 per share (after adjustments for any Stock splits or Stock dividends) and results in \$10,000,000 or more in gross cash proceeds to the Company (net of underwriter commissions and expenses) (the "Initial Registered Public Offering"); or

(ii) with respect to each share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, upon the receipt by the Corporation of the written consent to or request for such conversion from the holders of at least a majority of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock then outstanding, voting together as a single class, provided that all shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall convert concurrently; and provided further, that no shares of Series C Preferred Stock shall be converted unless the holders of a majority of the shares of Series C Preferred Stock then outstanding consent to such conversion.

(c) Mechanics of Conversion.

(i) Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such Stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. 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 he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.



(ii) If a voluntary 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) Adjustments for Stock Dividends, Subdivisions, or Split-ups of Common Stock. If the number of shares of Common Stock outstanding at any time after the filing of these Articles of Incorporation 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, effective at the close of business upon the record date fixed for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up, the Applicable Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A, Series B or Series C Preferred Stock, as applicable, shall be increased in proportion to such increase in the outstanding shares of Common Stock.

(e) Adjustments for Combinations of Common Stock. If the number of shares of Common Stock outstanding at any time after the filing of these Articles of Incorporation is decreased by a combination of the outstanding shares of Common Stock, then, effective at the close of business upon the record date of such combination, the Applicable Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series A, Series B or Series C Preferred Stock shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

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

(g) Adjustments for Reorganizations, Reclassifications, etc. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock or other securities or property, whether by reclassification, a merger or consolidation of this Corporation with or into any other corporation or corporations, or a sale of all or substantially all of the assets of this Corporation (but only if the shareholders of this Corporation hold more than 50% of the outstanding voting equity securities of the surviving corporation in such merger, consolidation or sale of assets reorganization), or otherwise

(other than a subdivision or combination of shares provided for above or a merger or other transaction referred to in Section 5(d) below) the Applicable Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock or securities or other property equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Preferred Stock immediately before such event; and, in any such case, appropriate adjustment (as determined by the Board) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustments of the Applicable Conversion Price) shall thereafter be applicable, as nearly as may be reasonable, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock. In the event of any conflict between this Section 4(g) and Section 5(e), Section 5(e) shall be controlling.

(h) No Impairment. The Corporation will not, except by a properly approved amendment of its Articles of Incorporation, through any reorganization, 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 Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(i) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Applicable Conversion Price pursuant to this Section 4, 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 Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, a certificate executed by the Corporation's President or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustments and readjustments, (B) the Applicable Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Preferred Stock.

(j) Notices of Record Date. In the event that the Corporation shall propose at any time: (a) to declare any special dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not out of earnings or earned surplus; (b) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (d) to merge or consolidate with or into any other corporation (other than a mere reincorporation transaction), or sell, lease or convey all

or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock:

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

(B) in the case of the matters referred to in (c) and (d) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(k) 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.

(l) 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, including, without limitation, engaging in its best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation.

(m) Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board).

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

Section 5. Liquidation Preferences.

(a) In the event of any liquidation, dissolution or winding up of the Corporation whether voluntary or involuntary, the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A Preferred Stock, Series B Preferred Stock, the Common Stock or any other shares of the Corporation other than Series C Preferred Stock by reason of their ownership thereof, from the entire assets and funds of the Corporation legally available for distribution, for each share of Series C Preferred Stock then held by them, (i) the amount of \$0.18 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus (ii) all declared or accrued but unpaid dividends on such share plus (iii) an amount per such share determined by multiplying the amount of the remaining assets and funds of the Corporation legally available for distribution by a fraction, (x) the numerator of which is the number of shares of Common Stock then issuable upon conversion of such share of Series C Preferred Stock and (y) the denominator of which is the number of shares of Common Stock then outstanding plus the number of shares of Common Stock then issuable upon conversion of all of the shares of Preferred Stock then outstanding; provided, however, that at such time as the payments of the liquidation preference pursuant to this Section 5(a) shall equal \$0.54 per share of Series C Preferred Stock, such holders shall not be entitled to any further distribution except as provided in Section 5(d) hereof. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the number of shares of Series C Preferred Stock then held by them.

(b) After payment to the holders of the Series C Preferred Stock of the amounts set forth in Section 5(a) above, the holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock or any other shares of the Corporation other than Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock by reason of their ownership thereof, from the entire remaining assets and funds of the Corporation legally available for distribution, an amount per share equal to (i) with respect to the Series A-1 Preferred Stock, \$0.16; (ii) with respect to the Series A-2 Preferred Stock, \$0.29<sup>1/3</sup>; (iii) with respect to the Series A-3 Preferred Stock, \$0.33<sup>1/3</sup>; (iv) with respect to the Series A-4 Preferred Stock, \$0.50; (v) with respect to the Series B-1 Preferred Stock, \$0.50; and (vi) with respect to the Series B-2 Preferred Stock, \$0.50 (in each case as adjusted for any stock dividends, combinations or splits with respect to such shares), and in each case plus all declared or accrued but unpaid dividends on such shares, for each such share of Series A Preferred Stock and Series B Preferred Stock then held by them; provided, however, that at such time as the payments of the liquidation preferences pursuant to Section 5(b) shall equal (i) \$0.54 per share of Series B Preferred Stock, such holders shall not be entitled to any further distribution, and (ii) \$0.54 per share of Series A Preferred Stock, such holders shall not be entitled to any further distribution. If upon the occurrence of such event, the assets and funds available for distribution shall be insufficient to permit the payment to such holders of Series A Preferred Stock and Series B Preferred of the full aforesaid preferential amount, then the entire

remaining assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) After payment to the holders of the Series B Preferred Stock and Series A Preferred Stock of the amounts set forth in Section 5(b) above, the entire remaining assets and funds of the corporation legally available for distribution, if any, shall be distributed among the holders of Common Stock in proportion to the shares of Common Stock then held by them.

(d) A merger, consolidation or reorganization of the Corporation with or into any other corporation or corporations in which the Corporation is not the surviving entity (other than a mere reincorporation transaction), a sale of all or substantially all of the assets of the Corporation or a transaction or series of related transactions (other than a public offering of the Corporation's securities) in which the Corporation issues shares representing more than 50% of the voting power of the Corporation immediately after giving effect to such transaction, shall be treated as a liquidation, dissolution or winding up for purposes of this Section 5. Any securities to be delivered to the holders of the Preferred Stock and Common Stock pursuant to such event shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability.

(A) If traded on a securities exchange or reported on a national inter-dealer quotation system, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) days prior to the closing;

(B) If actively traded over the counter and not reported on a national inter-dealer quotation system, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board.

(e) In the event of a transaction (or series of related transactions) to be treated as a liquidation pursuant to this Section 5, the Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 5, and the Corporation

shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of a majority of the shares of Preferred Stock, voting together as one class for this purpose.

**Section 6. Restrictions and Limitations.**

(a) **Series C Preferred Stock.** So long as at least an aggregate of 10,000,000 shares of the Series C Preferred Stock remain outstanding, this corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the total number of shares of Series C Preferred Stock outstanding:

(i) alter or change the rights, preferences or privileges of the Series C Preferred Stock;

(ii) increase or decrease the aggregate number of authorized shares of Series C Preferred Stock, other than an increase pursuant to a stock split;

(iii) authorize or issue, or obligate itself to issue, any other equity security senior to or on a parity with the Series C Preferred Stock as to dividends or assets in liquidation or create or reclassify any obligation or security convertible into or exchangeable for, or having any option rights to purchase, any such equity security;

(iv) take any action which results in the redemption of, or payment of dividends with respect to, any shares of Preferred Stock or Common Stock (other than pursuant to the exercise of any contractual or other legal rights of first refusal or repurchase, or any repurchase of outstanding securities of the Corporation that is unanimously approved by the Corporation's Board of Directors);

(v) take any action which results in the payment of dividends to the holders of the Preferred Stock or the Common Stock;

(vi) take any action which results in the voluntary dissolution or liquidation of the Corporation; or

(vii) take any action which results in a merger, consolidation, or reorganization with or into any other corporation or corporations (other than a mere reincorporation transaction), a sale of all or substantially all of the assets of the Corporation or a transaction or series of related transactions (other than a public offering of the Corporation's securities) in which shares representing more than 50% of the voting power of the Corporation immediately after giving effect to such transaction are issued.

Section 7. No Reissuance of Series A Preferred, Series B Preferred or Series C Preferred. No share or shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue. The Corporation may, from time to time, take such appropriate corporate action as many be necessary to reduce the authorized number of shares of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock.

Section 8. Redemption. There shall be no redemption rights for any Preferred Stock or Common Stock.

3. The foregoing amendment and restatement of the Articles of Incorporation have been duly approved by the Board of Directors.

4. The foregoing amendment and restatement of the Articles of incorporation have been duly approved by the required vote of the shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The total outstanding shares of the corporation are 3,759,032 shares of Common Stock, 13,572,000 shares of Series A-1 Preferred Stock, 3,803,998 shares of Series A-2 Preferred Stock, 552,000 shares of Series A-3 Preferred Stock, 300,000 shares of Series A-4 Preferred Stock, 2,160,000 shares of Series B-1 Preferred Stock, 10,781,618 shares of Series B-2 Preferred Stock and 22,421,666 shares of Series C Preferred Stock, all of which were entitled to vote with respect to the foregoing amendment and restatement. The number of shares voting in favor of the foregoing amendment and restatement equaled or exceeded the vote required. The affirmative vote of more than 50% of the outstanding shares of the Common Stock, voting as a separate class, and more than 50% of the outstanding Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, Series B-1 Preferred Stock, Series B-2 Preferred Stock and Series C Preferred Stock, each such series voting as a separate class, was required.

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

Dated: July 8, 1998



Bo Ericsson,  
President



Charles E. Crane,  
Secretary

