

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **1997-12-18** | Period of Report: **1997-10-31**
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FILER

DSP TECHNOLOGY INC

CIK: [773720](#) | IRS No.: [942832651](#) | State of Incorpor.: [CA](#) | Fiscal Year End: [0131](#)
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SIC: [3825](#) Instruments for meas & testing of electricity & elec signals

Business Address
*48500 KATO RD
FREMONT CA 94538
5106577555*

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

Quarterly report pursuant to Section 13 or 15(d) of the Securities
Exchange Act of 1934
For the quarterly period ended OCTOBER 31, 1997 or

Transition report pursuant to Section 13 or 15(d) of the Securities
Exchange Act of 1934
For the transition period from _____ to _____

Commission File Number 0-14677

DSP TECHNOLOGY INC.

(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction of
incorporation or organization)

94-2832651

I.R.S. Employer
Identification Number

48500 KATO RD., FREMONT, CA

(Address of principal executive offices)

94538

(Zip Code)

(510) 657-7555

(Registrant's telephone number including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES X NO
----- -----

APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS
DURING THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

YES NO
----- -----

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate number of shares outstanding of each of the issuer's classes of common stock, at the latest practical date:

CLASS	OUTSTANDING AS OF DECEMBER 12, 1997
-----	-----
COMMON STOCK	2,241,161

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DSP TECHNOLOGY INC. AND SUBSIDIARIES

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DSP TECHNOLOGY INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(Dollars in thousands)

	October 31, 1997	January 31, 1997
	-----	-----
ASSETS	(Unaudited)	
<S>	<C>	<C>

Current assets:		
Cash and certificates of deposit	\$ 1,579	\$ 1,323
Accounts receivable	8,384	4,784
Inventories	2,734	2,015
Deferred income taxes	154	154
Prepaid expenses	310	304
	-----	-----
Total current assets	13,161	8,580
Property and equipment	1,359	1,540
Cost in excess of net assets of acquired business	307	362
Other assets	1,314	1,317
	-----	-----
	\$16,141	\$11,799
	=====	=====

LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:		
Accounts payable	\$ 400	\$ 799
Accrued liabilities	4,719	1,849
Income taxes payable	762	206
	-----	-----
Total current liabilities	5,881	2,854
Deferred income taxes	258	258
Commitments and contingencies	--	--
Shareholders' equity:		
Preferred stock. Authorized 2,500,000 shares; one issued	--	--
Common stock. 25,000,000 shares authorized; shares issued and outstanding: 2,240,261 at October 31 and 2,179,962 at January 31	3,237	2,988
Retained earnings	6,765	5,699
	-----	-----
Total shareholders' equity	10,002	8,687
	-----	-----
	\$16,141	\$11,799
	=====	=====

</TABLE>

The accompanying notes are an integral part of these financial statements.

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DSP TECHNOLOGY INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share amounts)
(Unaudited)

Three months ended

Nine months ended

	October 31,		October 31,	
	1997	1996	1997	1996
<S>	<C>	<C>	<C>	<C>
Net sales	\$5,892	\$4,572	\$15,804	\$12,758
Cost of sales	2,640	1,868	7,377	5,306
Gross profit	3,252	2,704	8,427	7,452
Operating expenses:				
Research and development	718	564	1,826	1,633
Marketing, general and administrative	1,719	1,737	5,029	4,859
	2,437	2,301	6,855	6,492
Operating income	815	403	1,572	960
Interest income	47	13	156	95
Income before income taxes	862	416	1,728	1,055
Income taxes	345	140	691	351
Net income	\$ 517	\$ 276	\$ 1,037	\$ 704
Net income per common and common equivalent share	\$.22	\$.12	\$.45	\$.31
Weighted average common and common equivalent shares outstanding	2,350	2,290	2,323	2,305

</TABLE>

The accompanying notes are an integral part of these financial statements.

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DSP TECHNOLOGY INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Thousands)

	Nine months ended October 31,	
	1997	1996
<S>	<C>	<C>
Cash flows from operating activities:		
Net income	\$ 1,037	\$ 704
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	804	610

Changes in current assets and liabilities:		
Accounts receivable	(3,600)	(1,058)
Inventories	(719)	(237)
Prepaid expenses	(6)	(62)
Accounts payables	(399)	(38)
Accrued liabilities	2,870	(489)
Income taxes payable	556	(272)
	-----	-----
Net cash provided by (used in) operating activities	543	136
	-----	-----
Cash flows from investing activities:		
Purchases of property and equipment	(268)	(806)
Investment in software development	(320)	(405)
Other	52	(109)
	-----	-----
Net cash investing activities	(536)	(1,320)
	-----	-----
Cash flows from financing activities:		
Proceeds from issuance of common stock	249	67
	-----	-----
Net cash provided by financing activities	249	67
	-----	-----
Increase (decrease) in cash	256	(1,117)
	-----	-----
Cash at beginning of period	1,323	2,015
	-----	-----
Cash at end of period	\$ 1,579	\$ 898
	=====	=====
Supplemental disclosure of cash flow information:		
Cash paid during period for income taxes	\$ 77	\$ 559
	=====	=====

</TABLE>

The accompanying notes are an integral part of these financial statements.

DSP TECHNOLOGY INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Basis of Presentation.

The accompanying consolidated financial statements have been prepared, without audit, in accordance with Securities and Exchange Commission requirements for interim financial statements. Therefore, they do not include all the disclosures that would be presented in the Company's Annual Report on Form 10-K. The financial statements should be read in conjunction with the Company's January 31, 1997 financial statements and accompanying notes thereto.

The information furnished reflects all adjustments (consisting only of normal recurring adjustments) that are, in the opinion of management, necessary for a fair presentation of financial position, results of operations and cash flows for the interim period. The results of operations for the periods presented are not necessarily indicative of results to be expected for the full year.

For accounting purposes, the Company changed to a 52/53 week convention with the fiscal year ending on the Sunday nearest the end of January. However, for financial reporting purposes, each fiscal quarter or year is presented as if it ended on the last day of such period. The third quarter fiscal 1998 ended November 2, 1997.

2. Inventories. Inventories are stated at the lower of cost (first-in, first-out) or market. Inventories consist of:

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	October 31, 1997	January 31, 1997
	-----	-----
	(thousands)	
<S>	<C>	<C>
Raw materials	\$1,325	\$1,221
Work in process	1,092	476
Finished goods	317	318
	-----	-----
	\$2,734	\$2,015
	=====	=====

</TABLE>

3. Accounts Receivable and Accrued Liabilities. Accounts receivable and accrued liabilities at October 31, 1997 include \$1,833,000 in receivables for customer advanced payment commitments against contracts. In the future, the Company will not recognize the receivable; instead, it will recognize the accrued liability at the time the Company receives the advance payment from the customer.
4. The Company reincorporated in Delaware on September 12, 1997.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

This section of the report contains forward-looking statements regarding the Company's expected growth and enhanced future performance. All forward-looking statements are subject to risk and actual results could differ materially from those projected in the forward-looking statements as a result of many factors which are set forth below.

Results of Operations

Net sales for the third quarter of fiscal 1998 ended November 2, 1997

increased by \$1,320,000 or 29% to \$5,892,000 from \$4,572,000 in the third quarter of fiscal 1996 ended October 31, 1996. Net sales for the first nine months of fiscal 1998 were \$15,804,000 or 24% higher than net sales of \$12,758,000 in the first nine months of fiscal 1997. The increases were due to continued strong demand for the company's RedLine data acquisition products and turnkey services.

Third quarter cost of sales as a percentage of net sales increased to 45% in this year from 41% in the same period last year. Cost of sales as a percentage of net sales also increased to 47% in the first nine months this year compared to 42% in fiscal 1997's first nine months. As anticipated, the increases in cost of sales were a result of product mix with lower-margin service-related revenues becoming a bigger part of the Company's business.

Research and development ("R&D") expenses increased by \$154,000 to \$718,000 in the third quarter this year compared to \$564,000 in the same period last year. R&D expenses in the first nine months of this year increased slightly to \$1,826,000 from \$1,633,000 in the first nine months of fiscal 1997. The increases in expenses in both the third quarter and the first nine months were primarily due to higher development costs associated with new RedLine products scheduled for introduction in the Spring of 1998 and beyond.

Marketing, general and administrative expenses in the third quarter of fiscal 1998 decreased slightly to \$1,719,000 from \$1,737,000 in the same quarter last year. For the first nine months of this year, marketing, general and administrative expenses increased by \$170,000 or 3% to \$5,029,000 compared to \$4,859,000 last year. As a percentage of sales, however, expenses decreased to 29% from 38% in the third quarter and to 32% from 38% in the first nine months of this year compared to the respective periods last year. The higher expenses were principally due to additional sales and marketing staff, and higher internal sales commissions due to higher sales bookings.

The effective tax rate computed were 40% for the third quarter and 40% for the first nine months this year compared to 34% for the third quarter and 33% for the first nine months last year. The tax rates computed depend primarily on the profit contribution mix between the Company's U.S. operations and U.K. subsidiary. The higher rates this year reflect higher domestic profit contribution this year versus last year. Domestic tax rates tend to be higher than the foreign subsidiary's tax rate. Other factors that may affect the tax rates include R&D tax credits and software capitalization levels. The company reviews the tax rate quarterly and could make minor adjustments to reflect changing estimates.

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Liquidity and Capital Resources

Cash increased by \$256,000 during the nine month period ended November 2, 1997. Accounts receivable increased by \$3,600,000 brought about by high shipments in the last month of the period and the inclusion of approximately \$1,833,000 in customer advanced deposit commitments. The primary use of the Company's cash in the first nine months of fiscal 1998 has been: the purchase of capital equipment used to equip additional personnel and to upgrade our information systems capabilities, and investment in software development.

Working capital at November 2, 1997 improved to \$7,911,000 compared to \$5,726,000 at the beginning of the fiscal year, while the current ratio stood at 2.6 to 1.0 at November 2, 1997 and at 3.0 to 1.0 at January 31, 1997. At November 2, 1997, the Company has a \$1,000,000 secured bank line of credit. The

Company currently anticipates that internally generated funds and bank borrowings will be sufficient to satisfy its anticipated operating and capital needs over the foreseeable future.

At November 2, 1997, the Company had no material outstanding commitments to purchase capital equipment.

Factors That May Affect Future Results

The Company's future operating results may be affected by a number of factors, including: timing of receipt of major system orders; timing of service revenues; product mix; the Company's ability to timely introduce new products, services and enhancements for its customers and achieve market acceptance as demands for increasingly sophisticated measurement and control systems continue; uncertainties relative to global economic conditions; ability to attract and retain for qualified personnel in various technical positions; the Company's ability to withstand competition particularly from several companies that are much larger in size than the Company; international currency fluctuations; natural disasters, particularly earthquakes which may strike the California area where the Company's headquarters and manufacturing facility are located; and availability and cost of components for its products.

Management expanded the services side of the Company's transportation market business. These services include systems integration, project management, commissioning and installation. These services are usually coupled with the sale of our RedLine products and has allowed us to pursue further growth in the transportation market by providing "one-stop" or turnkey shopping to our customers. This services business raises several risk factors. Specifically, the success depends on the time it takes for services personnel and future staff to come up to speed on our products, customers and the services they will provide; market acceptance of the services; the ability to manage customer projects profitably; the ability to integrate our products with other vendors' products; availability and quality of other vendors' products; and other scheduling and delivery risks.

Because of the foregoing factors, as well as other factors affecting the Company's operating results, past financial performance should not be considered to be a reliable indicator of future performance, and investors should not use historical trends to anticipate results or trends in future periods.

Part II. OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

A. Exhibits:

The following exhibits are filed or incorporated by reference as part of this Report:

Ex. No.	Description
-----	-----

3.1	Agreement and Plan of Merger between DSP Technology Inc., a California corporation, and DSP Technology Inc., a Delaware corporation, dated April 28, 1997, including as Exhibit A, Registrant's Certificate of Incorporation.
-----	---

3.2 Amended Restated By-Laws of Registrant.

10.53 1991 Stock Option Plan, as amended

27 Financial Data Schedule

B. Reports on Form 8-K: None.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DSP TECHNOLOGY INC.

(Registrant)

By: /s/ Jose M. Millares

Jose M. Millares

Chief Financial Officer

Date: December 16, 1997

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EXHIBIT INDEX

Ex. No. Description

3.1 Agreement and Plan of Merger between DSP Technology Inc., a California corporation, and DSP Technology Inc., a Delaware corporation, dated April 28, 1997, including as Exhibit A, Registrant's Certificate of Incorporation.

3.2 Amended Restated By-Laws of Registrant.

10.53 1991 Stock Option Plan, as amended

27 Financial Data Schedule

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Merger Agreement") is entered into as of the 28th day of April, 1997 by and between DSP Technology Inc., a California corporation ("DSP California"), and DSP Technology Inc., a Delaware corporation ("DSP Delaware").

WITNESSETH:

WHEREAS, DSP Delaware is a corporation duly organized and existing under the laws of the State of Delaware;

WHEREAS, DSP California is a corporation duly organized and existing under the laws of the State of California;

WHEREAS, on the date of this Merger Agreement, DSP Delaware has authority to issue 1,000 shares of Common Stock, par value \$.001 per share (the "DSP Delaware Common Stock"), of which 100 shares are issued and outstanding and owned by DSP California;

WHEREAS, as of April 25, 1997, the record date of the 1997 Annual Meeting of Shareholders (the "Annual Meeting"), DSP California has authority to issue (i) 25,000,000 shares of Common Stock (the "DSP California Common Stock"), of which 2,180,962 shares are issued and outstanding and (ii) 2,500,000 shares of Preferred Stock, of which no shares are issued and outstanding;

WHEREAS, the respective Boards of Directors for DSP Delaware and DSP California have determined that, for the purpose of effecting the reincorporation of DSP California in the State of Delaware, it is advisable and to the advantage of said two corporations and their shareholders that DSP California merge with and into DSP Delaware upon the terms and conditions herein provided; and

WHEREAS, the respective Boards of Directors of DSP Delaware and DSP California, the shareholders of DSP California, and the sole stockholder of DSP Delaware have adopted and approved this Merger Agreement;

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, DSP California and DSP Delaware hereby agree to merge as follows:

1. Merger. DSP California shall be merged with and into DSP Delaware,

and DSP Delaware shall survive the merger ("Merger"), effective upon the date when this Merger Agreement is made effective in accordance with applicable law (the "Effective Date").

2. Governing Documents. The Certificate of Incorporation of DSP Delaware

shall be amended and restated as in the form attached hereto as Appendix A, and

shall be the Certificate of Incorporation of the surviving corporation; and the By-Laws of DSP Delaware shall be amended and restated as in the form attached hereto as Appendix B, provided, however, that (i) in the event Proposal Four A

is approved by the requisite vote of the shareholders of DSP California at the Annual Meeting, Article TENTH of the Certificate of Incorporation attached as

Appendix A shall be deleted; (ii) in the event Proposal Four B is approved by

the requisite vote of the shareholders of DSP California at the Annual Meeting, Article SIXTH, Section A of the Certificate of Incorporation attached as

Appendix A and Article 2, Sections 2.2 and 2.12 of the Delaware By-Laws shall

read in their entirety as set forth on Exhibit 1 hereto; (iii) in the event Proposal Four C is approved by the requisite vote of the shareholders of DSP California at the Annual Meeting, a new Article FIFTH, Section C (as set forth on Exhibit 2 hereto) shall be added to the Certificate of Incorporation attached as Appendix A and Article 1, Section 1.12 of the Delaware By-Laws shall read in

its entirety as set forth on Exhibit 2 hereto; (iv) in the event Proposal

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Four D is approved by the requisite vote of the shareholders of DSP California at the Annual Meeting, a new Article FIFTH, Section D (as set forth as Exhibit 3 hereto) shall be added to the Certificate of Incorporation

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attached as Appendix A and Article 1, Section 1.3 of the Delaware By-Laws shall

read in its entirety as set forth on Exhibit 3 hereto; and (v) in the event Proposal Four E is approved by the requisite vote of the shareholders of DSP California at the Annual Meeting, Article SEVENTH and Article NINTH of the Certificate of Incorporation attached as Appendix A, and Article 6, Section 6.2

of the Delaware By-Laws shall read as set forth in Exhibit 5 hereto.

3. Directors and Officers. The directors and officers of DSP California

shall become the directors and officers of DSP Delaware upon the Effective Date.

4. Succession. On the Effective Date, DSP Delaware shall succeed to DSP

California in the manner of and as more fully set forth in Section 259 of the General Corporation Law of the State of Delaware.

5. Further Assurances. From time to time, as and when required by DSP

Delaware or by its successors and assigns, there shall be executed and delivered on behalf of DSP California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest, perfect or confirm, of record or otherwise, in DSP Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of DSP California, and otherwise to carry out the purposes of this Merger Agreement and the officers and directors of DSP Delaware are fully authorized in the name and on behalf of DSP California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

6. Stock of DSP California. Upon the Effective Date, by virtue of the

Merger and without any action on the part of the holder thereof, each share of DSP California Common Stock outstanding immediately prior thereto shall be changed and converted into one fully paid and nonassessable share of DSP Delaware Common Stock.

7. Stock Certificates. On and after the Effective Date, all of the

outstanding certificates which prior to that time represented shares of DSP California stock shall be deemed for all purposes to evidence ownership of and to represent the shares of DSP Delaware stock into which the shares of DSP California stock represented by such certificates have been converted as herein provided. The registered owner on the books and records of DSP Delaware or its transfer agent of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to DSP Delaware or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of DSP Delaware stock evidenced by such outstanding certificate as above provided.

8. Options. Upon the Effective Date, each outstanding option or other

right to purchase shares of DSP California stock, including those options granted under the 1991 Stock Option Plan (the "Option Plan") and the 1991 Outside Directors Stock Option Plan (the "Directors Plan") of DSP California, shall be converted into and become an option or right to purchase the same number of shares of DSP Delaware stock at a price per share equal to the exercise price of the option or right to purchase DSP California stock and upon the same terms and subject to the same conditions as set forth in the Option Plan and the Directors Plan, respectively, and other agreements entered into by

DSP California pertaining to such options or rights. A number of shares of DSP Delaware stock shall be reserved for purposes of such options and rights equal to the number of shares of DSP California stock so reserved as of the Effective Date. As of the Effective Date, DSP Delaware shall assume all obligations of DSP California under agreements pertaining to such options and rights, including the Option Plan, and the outstanding options or other rights, or portions thereof, granted pursuant thereto.

9. Other Employee Benefit Plans. As of the Effective Date, DSP Delaware

hereby assumes all obligations of DSP California under any and all employee benefit plans in effect as of said date or with respect to which employee rights or accrued benefits are outstanding as of said date.

10. Outstanding Common Stock of DSP Delaware. Forthwith upon the

Effective Date, the One Hundred (100) shares of DSP Delaware Common Stock presently issued and outstanding in the name of DSP California shall be canceled and retired and resume the status of authorized and unissued shares of DSP Delaware

Common Stock, and no shares of DSP Delaware Common Stock or other securities of DSP Delaware shall be issued in respect thereof.

11. Covenants of DSP Delaware. DSP Delaware covenants and agrees that it

will, on or before the Effective Date:

a. Qualify to do business as a foreign corporation in the State of California, and in all other states in which DSP California is so qualified and in which the failure so to qualify would have a material adverse impact on the business or financial condition of DSP Delaware. In connection therewith, DSP Delaware shall irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California Corporations Code and under applicable provisions of state law in other states in which qualification is required hereunder.

b. File any and all documents with the California Franchise Tax Board necessary to the assumption by DSP Delaware of all of the franchise tax liabilities of DSP California.

12. Book Entries. As of the Effective Date, entries shall be made upon

the books of DSP Delaware in accordance with the following:

a. The assets and liabilities of DSP California shall be recorded at the amounts at which they were carried on the books of DSP California immediately prior to the Effective Date, with appropriate adjustments to reflect

the retirement of the one hundred (100) shares of DSP Delaware Common Stock presently issued and outstanding.

b. There shall be credited to the capital stock of DSP Delaware the aggregate amount of the par value of all shares of DSP Delaware stock resulting from the conversion of the outstanding California Common Stock pursuant to the Merger.

c. There shall be credited to the capital surplus account of DSP Delaware the aggregate of the amounts shown in the capital stock and capital surplus accounts of DSP California immediately prior to the Effective Date, less the amount credited to the common stock account of DSP Delaware pursuant to Paragraph (b) above.

d. There shall be credited to the retained earnings account of DSP Delaware an amount equal to that carried in the retained earning account of DSP California immediately prior to the Effective Date.

13. Condition. It shall be a condition precedent to the consummation of -----
the Merger and the other transactions contemplated by this Merger Agreement that the shares of Delaware Common Stock to be issued by DSP Delaware shall, upon official notice of issuance, be listed on the Nasdaq National Market prior to or on the Effective Date.

14. Amendment. At any time before or after approval and adoption by the -----
shareholders of DSP California, this Merger Agreement may be amended in any manner as may be determined in the judgment of the respective Boards of Directors of DSP Delaware and DSP California to be necessary, desirable or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purposes and intent of this Merger Agreement.

15. Abandonment. At any time before the Effective Date, this Merger -----
Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either DSP California or DSP Delaware or both, notwithstanding approval of this Merger Agreement by the sole stockholder of DSP Delaware and the shareholders of DSP California.

16. Counterparts. In order to facilitate the filing and recording of this -----
Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by resolution of the Board of Directors of DSP California and DSP Delaware, is hereby executed on behalf of each of said two corporations by their respective

officers thereunto duly authorized.

DSP Technology Inc., a Delaware corporation

By: /s/ F. Gil Troutman, Jr.

F. Gil Troutman, Jr.,
President

ATTEST:

/s/ Jose M. Millares, Jr.

Jose M. Millares, Jr., Secretary

DSP Technology Inc., a California corporation

By: /s/ F. Gil Troutman, Jr.

F. Gil Troutman, Jr.,
President

ATTEST:

/s/ Jose M. Millares, Jr.

Jose M. Millares, Jr., Secretary

Exhibit 1

CLASSIFIED BOARD OF DIRECTORS REMOVABLE ONLY FOR CAUSE
(Proposal Four B)

In the event Proposals Three and Four B are approved by the requisite vote of the shareholders, Article Sixth, Section A of the Delaware Certificate shall read in its entirety as follows:

The number of directors shall initially be four (4) and thereafter shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized

directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption). Upon the effective date of the merger of DSP Technology Inc., a California corporation with and into the Corporation (the "Effective Date") the directors shall be divided into three classes with the term of office of the first class to expire at the first annual meeting of the stockholders following the Effective Date, the term of office of the second class to expire at the second annual meeting of stockholders held following the Effective Date, the term of office of the third class to expire at the third annual meeting of stockholders following the Effective Date, and thereafter for each such term to expire at each third succeeding annual meeting of stockholders after such election. All directors shall hold office until the expiration of the term for which elected, and until their respective successors are elected, except in the case of the death, resignation, or removal of any director."; and

Article 2, Sections 2.2. and 2.12. of the Delaware By-Laws shall read their entirety as follows:

"2.2. Number and Term of Office. The number of directors shall initially -----
be four (4) and, thereafter, shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption). Upon the effective date of the Agreement and Plan of Merger between the Corporation and DSP Technology Inc., a California corporation (the "Effective Date"), the directors shall be divided into three classes, with the term of office of the first class to expire at the first annual meeting of stockholders held after the Effective Date; the term of office of the second class to expire at the second annual meeting of stockholders held after the Effective Date; the term of office of the third class to expire at the third annual meeting of stockholders held after the Effective Date; and thereafter for each such term to expire at each third succeeding annual meeting of stockholders after such election. All directors shall hold office until the expiration of the term for which elected and until their respective successors are elected, except in the case of the death, resignation or removal of any director."

* * * *

"2.12. Removal. Subject to the rights of the holders of any series of -----
Preferred Stock then outstanding, any directors, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of all of the outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class."

Exhibit 2

ELIMINATION OF ACTION BY WRITTEN CONSENT
(Proposal Four C)

In the event Proposals Three and Four C are approved by the requisite vote of the shareholders, Article Fifth, Section C of the Delaware Certificate shall read in its entirety as follows:

"C. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders."; and

Article 1, Section 1.12. of the Delaware By-Laws shall read in its entirety as follows:

"1.12. No Stockholder Action Without Meeting. Any action required or

permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders."

Exhibit 3

LIMITATION ON THE ABILITY TO CALL SPECIAL MEETINGS
(Proposal Four D)

Exhibit 3(A):

In the event Proposals Three and Four D are approved by the requisite vote of the shareholders, Article Fifth, Section D of the Delaware Certificate will read its entirety as follows:

"D. Special meetings of stockholders of the Corporation may be called only by the Board of Directors, the Chairman of the Board of Directors or the President and Chief Executive Officer."; and

Exhibit 3(B):

Article 1, Section 1.3. of the Delaware By-Laws shall read in its entirety as follows:

"1.3. Special Meetings. Special meetings of Stockholders may be called at

any time only by the Board of Directors, Chairman of the Board or the President and Chief Executive Officer."

Exhibit 4

SUPER-MAJORITY VOTE REQUIREMENT FOR AMENDMENT OF THE
DELAWARE CERTIFICATE AND BY-LAWS
(Proposal Four E)

In the event Proposals Three and Four E are approved by the requisite vote of the shareholders, Article Ninth of the Delaware Certificate shall read in its entirety as follows:

"The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; provided, however,

that, notwithstanding any other provision of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of this Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal this Article NINTH, Article FIFTH, Article SIXTH, Article SEVENTH or Article EIGHTH."; and

Article Seventh of the Delaware Certificate shall read in its entirety as follows:

"The Board of Directors is expressly empowered to adopt, amend or repeal By-Laws of the Corporation. The stockholders shall also have power to adopt, amend or repeal the By-Laws of the Corporation. Any adoption, amendment or repeal of By-Laws of the Corporation by the stockholders shall require, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class."; and

Article 6, Section 6.2. of the Delaware By-Laws shall read in its entirety as follows:

"6.2. By the Stockholders. Except as otherwise set forth in these By-

Laws, these By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at any annual meeting of stockholders, or at any special meeting of stockholders, provided notice of such alteration, amendment, repeal or adoption of new By-Laws shall have been stated in the notice of such special meeting."

APPENDIX A

CERTIFICATE OF INCORPORATION
OF DSP TECHNOLOGY INC.

FIRST: The name of the Corporation is DSP Technology Inc. (hereinafter

sometimes referred to as the "Corporation").

SECOND: The address of the registered office of the Corporation in the State

of Delaware is Incorporating Services, Ltd., 15 East North Street, in the City of Dover, County of Kent. The name of the registered agent at that address is Incorporating Services, Ltd.

THIRD: The purpose of the Corporation is to engage in any lawful act or

activity for which a corporation may be organized under the General Corporation Law of Delaware.

FOURTH:

A. The total number of shares of all classes of stock which the Corporation shall have authority to issue is Sixteen Million Shares (16,000,000) consisting of:

1. Fifteen Million (15,000,000) shares of Common Stock, par value one-tenth of one cent (\$.001) per share (the "Common Stock"); and
2. One Million (1,000,000) shares of Preferred Stock, par value one-tenth of one cent (\$.001) per share (the "Preferred Stock").

B. The Board of Directors is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in series and, by filing a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to

fix the designation, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereon. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the certificate or certificates establishing the series of Preferred Stock.

FIFTH: The following provisions are inserted for the management of the

business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

- A. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the By-Laws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.
- B. The directors of the Corporation need not be elected by written ballot unless the By-Laws so provide.

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SIXTH:

- A. The number of directors shall initially be four (4) and thereafter shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption). All directors shall hold office until the expiration of the term for which elected, and until their respective successors are elected, except in the case of the death, resignation, or removal of any director.
- B. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation or other cause (including removal from office by a vote of the stockholders) may be filled only by a majority vote of the directors then in office, though less than a quorum, or by the sole remaining director, and directors

so chosen shall hold office for a term expiring at the next annual meeting of stockholders, and until their respective successors are elected, except in the case of the death, resignation, or removal of any director.

SEVENTH: The Board of Directors is expressly empowered to adopt, amend or
----- repeal By-Laws of the Corporation. The stockholders shall also have power to adopt, amend or repeal the By-Laws of the Corporation. Any adoption, amendment or repeal of By-Laws of the Corporation by the stockholders shall require, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

EIGHTH: A director of the Corporation shall not be personally liable to the
----- Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

If the Delaware General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

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

NINTH: The Corporation reserves the right to amend or repeal any provision
----- contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; provided, however, that, notwithstanding any other provision of this

Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of this Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors,

voting together as a single class, shall be required to amend or repeal this Certificate of Incorporation.

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TENTH Every stockholder entitled to vote at any election of directors of

this company may cumulate his votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which his shares are entitled, or distribute his votes on the same principle among as many candidates as he thinks fit. The candidates receiving the highest number of votes up to the number of directors to be elected are elected.

APPENDIX B

BY-LAWS OF DSP TECHNOLOGY INC. (DELAWARE)

Article 1. Stockholders

PLACE OF MEETINGS. ALL MEETINGS OF STOCKHOLDERS SHALL BE HELD AT SUCH PLACE

WITHIN OR WITHOUT THE STATE OF DELAWARE AS MAY BE DESIGNATED FROM TIME TO TIME BY THE BOARD OF DIRECTORS OR THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OR, IF NOT SO DESIGNATED, AT THE REGISTERED OFFICE OF THE CORPORATION.

ANNUAL MEETING. THE ANNUAL MEETING OF STOCKHOLDERS FOR THE ELECTION OF

DIRECTORS AND FOR THE TRANSACTION OF SUCH OTHER BUSINESS AS MAY PROPERLY BE BROUGHT BEFORE THE MEETING SHALL BE HELD ON A DATE TO BE FIXED BY THE BOARD OF DIRECTORS OR THE PRESIDENT AND CHIEF EXECUTIVE OFFICER AT THE TIME AND PLACE TO BE FIXED BY THE BOARD OF DIRECTORS OR THE PRESIDENT AND STATED IN THE NOTICE OF THE MEETING. IF NO ANNUAL MEETING IS HELD IN ACCORDANCE WITH THE FOREGOING PROVISIONS, THE BOARD OF DIRECTORS SHALL CAUSE THE MEETING TO BE HELD AS SOON THEREAFTER AS CONVENIENT.

SPECIAL MEETINGS. SPECIAL MEETINGS OF STOCKHOLDERS MAY BE CALLED AT ANY TIME

ONLY BY THE BOARD OF DIRECTORS, THE CHAIRMAN OF THE BOARD, THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OR THE HOLDERS OF 10% OR MORE OF THE OUTSTANDING VOTING POWER OF THE CORPORATION. BUSINESS TRANSACTED AT ANY SPECIAL MEETING OF STOCKHOLDERS SHALL BE CONFINED TO THE PURPOSE OR PURPOSES STATED IN THE NOTICE OF MEETING.

NOTICE OF MEETINGS. WRITTEN NOTICE OF EACH MEETING OF STOCKHOLDERS, WHETHER

ANNUAL OR SPECIAL, SHALL BE GIVEN NOT LESS THAN TEN (10) NOR MORE THAN SIXTY (60) DAYS BEFORE THE DATE ON WHICH THE MEETING IS TO BE HELD, TO EACH STOCKHOLDER ENTITLED TO VOTE AT SUCH MEETING, EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS REQUIRED BY LAW (MEANING HERE AND HEREAFTER, AS REQUIRED FROM TIME TO TIME BY THE DELAWARE GENERAL CORPORATION LAW OR THE CERTIFICATE OF INCORPORATION). THE NOTICES OF ALL MEETINGS SHALL STATE THE PLACE, DATE AND HOUR OF THE MEETING. THE NOTICE OF A SPECIAL MEETING SHALL STATE, IN ADDITION, THE PURPOSE OR PURPOSES FOR WHICH THE MEETING IS CALLED. IF MAILED, NOTICE IS GIVEN WHEN DEPOSITED IN THE UNITED STATES MAIL, POSTAGE PREPAID, DIRECTED TO THE STOCKHOLDER AT HIS ADDRESS AS IT APPEARS ON THE RECORDS OF THE CORPORATION.

VOTING LIST. THE OFFICER WHO HAS CHARGE OF THE STOCK LEDGER OF THE CORPORATION

SHALL PREPARE, AT LEAST TEN (10) DAYS BEFORE EACH MEETING OF STOCKHOLDERS, A COMPLETE LIST OF THE STOCKHOLDERS ENTITLED TO VOTE AT THE MEETING, ARRANGED IN ALPHABETICAL ORDER, AND SHOWING THE ADDRESS OF EACH STOCKHOLDER AND THE NUMBER OF SHARES REGISTERED IN THE NAME OF EACH STOCKHOLDER. SUCH LIST SHALL BE OPEN TO THE EXAMINATION OF ANY STOCKHOLDER, FOR ANY PURPOSE GERMANE TO THE MEETING, DURING ORDINARY BUSINESS HOURS, FOR A PERIOD OF AT LEAST TEN (10) DAYS PRIOR TO THE MEETING, AT A PLACE WITHIN THE CITY WHERE THE MEETING IS TO BE HELD, WHICH PLACE SHALL BE SPECIFIED IN THE NOTICE OF THE MEETING, OR IF NOT SO SPECIFIED, AT THE PLACE WHERE THE MEETING IS TO BE HELD. THE LIST SHALL ALSO BE PRODUCED AND KEPT AT THE TIME AND PLACE OF THE MEETING DURING THE WHOLE TIME OF THE MEETING, AND MAY BE INSPECTED BY ANY STOCKHOLDER WHO IS PRESENT. THIS LIST SHALL PREEMPTIVELY

DETERMINE THE IDENTITY OF THE STOCKHOLDERS ENTITLED TO VOTE AT THE MEETING AND THE NUMBER OF SHARES HELD BY EACH OF THEM.

QUORUM. EXCEPT AS OTHERWISE PROVIDED BY LAW OR THESE BY-LAWS, THE HOLDERS OF A

MAJORITY OF THE SHARES OF THE CAPITAL STOCK OF THE CORPORATION ENTITLED TO VOTE AT THE MEETING, PRESENT IN PERSON OR REPRESENTED BY PROXY, SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS. IF A QUORUM SHALL FAIL TO ATTEND ANY MEETING, THE CHAIRMAN OF THE MEETING OR THE HOLDERS OF A MAJORITY OF THE SHARES OF STOCK ENTITLED TO VOTE WHO ARE PRESENT, IN PERSON OR BY PROXY, MAY ADJOURN THE MEETING TO ANOTHER PLACE, DATE OR TIME.

If a notice of any adjourned special meeting of stockholders is sent to all stockholders entitled to vote thereat, stating that it will be held with those present constituting a quorum, then except as otherwise required by law, those present at such adjourned meeting shall constitute a quorum, and all matters shall be determined by a majority of the votes cast at such meeting.

ADJOURNMENTS. ANY MEETING OF STOCKHOLDERS MAY BE ADJOURNED TO ANY OTHER TIME

AND TO ANY OTHER PLACE AT WHICH A MEETING OF STOCKHOLDERS MAY BE HELD UNDER THESE BY-LAWS BY THE HOLDERS OF A MAJORITY OF THE SHARES OF STOCK PRESENT OR REPRESENTED AT THE MEETING AND ENTITLED TO VOTE, ALTHOUGH LESS THAN A QUORUM,

OR, IF NO STOCKHOLDER IS PRESENT, BY ANY OFFICER ENTITLED TO PRESIDE AT OR TO ACT AS SECRETARY OF SUCH MEETING. WHEN A MEETING IS ADJOURNED TO ANOTHER PLACE, DATE OR TIME, WRITTEN NOTICE NEED NOT BE GIVEN OF THE ADJOURNED MEETING IF THE PLACE, DATE AND TIME THEREOF ARE ANNOUNCED AT THE MEETING AT WHICH THE ADJOURNMENT IS TAKEN; PROVIDED, HOWEVER, THAT IF THE DATE OF ANY ADJOURNED MEETING IS MORE THAN THIRTY (30) DAYS AFTER THE DATE FOR WHICH THE MEETING WAS ORIGINALLY NOTICED, OR IF A NEW RECORD DATE IS FIXED FOR THE ADJOURNED MEETING, WRITTEN NOTICE OF THE PLACE, DATE, AND TIME OF THE ADJOURNED MEETING SHALL BE GIVEN IN CONFORMITY HEREWITH. AT THE ADJOURNED MEETING, THE CORPORATION MAY TRANSACT ANY BUSINESS WHICH MIGHT HAVE BEEN TRANSACTED AT THE ORIGINAL MEETING.

VOTING AND PROXIES. EACH STOCKHOLDER SHALL HAVE ONE VOTE FOR EACH SHARE OF

STOCK ENTITLED TO VOTE HELD OF RECORD BY SUCH STOCKHOLDER AND A PROPORTIONATE VOTE FOR EACH FRACTIONAL SHARE SO HELD, UNLESS OTHERWISE PROVIDED BY LAW. EACH STOCKHOLDER OF RECORD ENTITLED TO VOTE AT A MEETING OF STOCKHOLDERS, MAY VOTE IN PERSON OR MAY AUTHORIZE ANY OTHER PERSON OR PERSONS TO VOTE OR ACT FOR HIM BY WRITTEN PROXY EXECUTED BY THE STOCKHOLDER OR HIS AUTHORIZED AGENT OR BY A TRANSMISSION PERMITTED BY LAW AND DELIVERED TO THE SECRETARY OF THE CORPORATION. NO STOCKHOLDER MAY AUTHORIZE MORE THAN ONE PROXY FOR HIS SHARES. ANY COPY, FACSIMILE TELECOMMUNICATION OR OTHER RELIABLE REPRODUCTION OF THE WRITING OR TRANSMISSION CREATED PURSUANT TO THIS SECTION MAY BE SUBSTITUTED OR USED IN LIEU OF THE ORIGINAL WRITING OR TRANSMISSION FOR ANY AND ALL PURPOSES FOR WHICH THE ORIGINAL WRITING OR TRANSMISSION COULD BE USED, PROVIDED THAT SUCH COPY, FACSIMILE TRANSMISSION OR OTHER REPRODUCTION SHALL BE A COMPLETE REPRODUCTION OF THE ENTIRE ORIGINAL WRITING OR TRANSMISSION.

ACTION AT MEETING. WHEN A QUORUM IS PRESENT AT ANY MEETING, ANY ELECTION SHALL

BE DETERMINED BY A PLURALITY OF THE VOTES CAST BY THE STOCKHOLDERS ENTITLED TO VOTE AT THE ELECTION, AND ALL OTHER MATTERS SHALL BE DETERMINED BY A MAJORITY OF THE VOTES CAST AFFIRMATIVELY OR NEGATIVELY ON THE MATTER (OR IF THERE ARE TWO OR MORE CLASSES OF STOCK ENTITLED TO VOTE AS SEPARATE CLASSES, THEN IN THE CASE OF EACH SUCH CLASS, A MAJORITY OF EACH SUCH CLASS PRESENT OR REPRESENTED AND VOTING AFFIRMATIVELY OR NEGATIVELY ON THE MATTER) SHALL DECIDE SUCH MATTER, EXCEPT WHEN A DIFFERENT VOTE IS REQUIRED BY EXPRESS PROVISION OF LAW, THE CERTIFICATE OF INCORPORATION OR THESE BY-LAWS.

All voting, including on the election of directors, but excepting where otherwise required by law, may be by a voice vote; provided, however, that upon demand therefor by a stockholder entitled to vote or his or her proxy, a stock vote shall be taken. Every stock vote shall be taken by ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. Every vote taken by ballots shall be counted by an inspector or inspectors appointed by the chairman of the meeting. The corporation may, and to the extent required by law, shall, in advance of any meeting of

stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as an

alternate inspector to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability.

NOTICE OF STOCKHOLDER BUSINESS. AT AN ANNUAL MEETING OF THE STOCKHOLDERS, ONLY

SUCH BUSINESS SHALL BE CONDUCTED AS SHALL HAVE BEEN PROPERLY BROUGHT BEFORE THE MEETING. TO BE PROPERLY BROUGHT BEFORE AN ANNUAL MEETING, BUSINESS MUST BE (I) SPECIFIED IN THE NOTICE OF MEETING (OR ANY SUPPLEMENT THERETO) GIVEN BY OR AT THE DIRECTION OF THE BOARD OF DIRECTORS, (II) PROPERLY BROUGHT BEFORE THE MEETING BY OR AT THE DIRECTION OF THE BOARD OF DIRECTORS, OR (III) PROPERLY BROUGHT BEFORE AN ANNUAL MEETING BY A STOCKHOLDER. FOR BUSINESS TO BE PROPERLY BROUGHT BEFORE AN ANNUAL MEETING BY A STOCKHOLDER, THE STOCKHOLDER MUST HAVE GIVEN TIMELY NOTICE THEREOF IN WRITING TO THE SECRETARY OF THE CORPORATION. TO BE TIMELY, A STOCKHOLDER PROPOSAL TO BE PRESENTED AT AN ANNUAL MEETING SHALL BE RECEIVED AT THE CORPORATION'S PRINCIPAL EXECUTIVE OFFICES NOT LESS THAN 120 CALENDAR DAYS IN ADVANCE OF THE DATE THAT THE CORPORATION'S (OR THE CORPORATION'S PREDECESSOR'S) PROXY STATEMENT WAS RELEASED TO STOCKHOLDERS IN CONNECTION WITH THE PREVIOUS YEAR'S ANNUAL MEETING OF STOCKHOLDERS, EXCEPT THAT IF NO ANNUAL MEETING WAS HELD IN THE PREVIOUS YEAR OR THE DATE OF THE ANNUAL MEETING HAS BEEN ADVANCED BY MORE THAN 30 CALENDAR DAYS FROM THE DATE CONTEMPLATED AT THE TIME OF THE PREVIOUS YEAR'S PROXY STATEMENT, NOTICE BY THE STOCKHOLDERS TO BE TIMELY MUST BE RECEIVED NOT LATER THAN THE CLOSE OF BUSINESS ON THE TENTH DAY FOLLOWING THE DAY ON WHICH THE DATE OF THE ANNUAL MEETING IS PUBLICLY ANNOUNCED.

A stockholder's notice to the Secretary of the Corporation shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting, (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (iii) the class and number of shares of the Corporation which are beneficially owned by the stockholder, and (iv) any material interest of the stockholder in such business.

CONDUCT OF BUSINESS. AT EVERY MEETING OF THE STOCKHOLDERS, THE CHAIRMAN OF THE

BOARD, IF THERE IS SUCH AN OFFICER, OR IF NOT, THE PERSON APPOINTED BY THE BOARD OF DIRECTORS, SHALL ACT AS CHAIRMAN. THE SECRETARY OF THE CORPORATION OR A PERSON DESIGNATED BY THE CHAIRMAN OF THE MEETING SHALL ACT AS SECRETARY OF THE MEETING. UNLESS OTHERWISE APPROVED BY THE CHAIRMAN OF THE MEETING, ATTENDANCE AT THE STOCKHOLDERS' MEETING IS RESTRICTED TO STOCKHOLDERS OF RECORD, PERSONS AUTHORIZED IN ACCORDANCE WITH SECTION 1.8 OF THESE BY-LAWS TO ACT BY PROXY, AND OFFICERS OF THE CORPORATION.

The Chairman of the meeting shall call the meeting to order, establish the agenda, and conduct the business of the meeting in accordance therewith or, at the Chairman's discretion, it may be conducted otherwise in accordance with the

wishes of the stockholders in attendance. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

The Chairman shall also conduct the meeting in an orderly manner, rule on the precedence of, and procedure on, motions and other procedural matters, and exercise discretion with respect to such procedural matters with fairness and good faith toward all those entitled to take part. The Chairman may impose reasonable limits on the amount of time taken up at the meeting on discussion in general or on remarks by any one stockholder. Should any person in attendance become unruly or obstruct the meeting proceedings, the Chairman shall have the power to have such person removed from participation. Notwithstanding anything in the By-Laws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 1.11 and Section 1.10 above. The Chairman of a meeting shall, if the facts warrant, determine and declare to the meeting that any proposed item of business was not brought before the meeting in accordance with the provisions of this Section 1.11 and Section 1.10, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

STOCKHOLDER ACTION BY WRITTEN CONSENT. ANY ACTION WHICH MAY BE TAKEN AT ANY

ANNUAL OR SPECIAL MEETING OF STOCKHOLDERS MAY BE TAKEN WITHOUT A MEETING AND WITHOUT PRIOR NOTICE, IF A CONSENT IN WRITING, SETTING FORTH THE ACTIONS SO TAKEN, IS SIGNED BY THE HOLDERS OF OUTSTANDING SHARES HAVING NOT LESS THAN THE MINIMUM NUMBER OF VOTES WHICH WOULD BE NECESSARY TO AUTHORIZE OR TAKE SUCH ACTION AT A MEETING AT WHICH ALL SHARES ENTITLED TO VOTE THEREON WERE PRESENT AND VOTED. ALL SUCH CONSENTS SHALL BE FILED WITH THE SECRETARY OF THE CORPORATION AND SHALL BE MAINTAINED IN THE CORPORATE RECORDS. PROMPT NOTICE OF THE TAKING OF A CORPORATE ACTION WITHOUT A MEETING BY LESS THAN UNANIMOUS WRITTEN CONSENT SHALL BE GIVEN TO THOSE STOCKHOLDERS WHO HAVE NOT CONSENTED IN WRITING.

Article 2. Board of Directors

2.1. General Powers. The business and affairs of the corporation shall be

managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law or the Certificate of Incorporation. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board until the vacancy is filled.

2.2. Number and Term of Office. The number of directors shall initially be

four (4) and, thereafter, shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in

previously authorized directorships at the time any such resolution is presented to the Board for adoption). All directors shall hold office until the expiration of the term for which elected and until their respective successors are elected, except in the case of the death, resignation or removal of any director.

2.3. Vacancies and Newly Created Directorships Subject to the rights of

the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification or other cause (including removal from office by a vote of the stockholders) may be filled only by a majority vote of the directors then in office, though less than a quorum, and directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders at which the term of office of the class to which they have been elected expires. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

2.4. Resignation. Any director may resign by delivering his written

resignation to the corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

2.5. Regular Meetings. Regular meetings of the Board of Directors may be

held without notice at such time and place, either within or without the State of Delaware, as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.6. Special Meetings. Special meetings of the Board of Directors may be

called at any time and place, within or without the State of Delaware, by the Chairman of the Board, the President and Chief Executive Officer, two or more directors, or by one director in the event that there is only a single director in office.

2.7. Notice of Special Meetings. Notice of any special meeting of

directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (i) by giving notice to such director in person or by telephone or electronic voice message system at least 24 hours in advance of the meeting, (ii) by sending a telegram, telecopy or telex, or delivering written notice by hand, to his last known business or home address at least 24 hours in advance of

the meeting, or (iii) by mailing written notice to his last known business or home address at least three (3) day in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

2.8. Participation in Meetings by Telephone Conference Calls. Directors or

any members of any committee designated by the directors may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.9. Quorum. A majority of the total number of authorized directors shall

constitute a quorum at any meeting of the Board of Directors. In the event one or more of the directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by one for each such director so disqualified; provided, however, that in no case shall less than one-third (1/3) of the number so fixed constitute a quorum. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or at a meeting of a committee which authorizes a particular contract or transaction.

2.10 Action at Meeting. At any meeting of the Board of Directors at which

a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Incorporation or these By-Laws.

2.11. Action by Consent. Any action required or permitted to be taken at

any meeting of the Board of Directors or of any committee of the Board of Directors may be taken without a meeting, if all members of the Board or committee, as the case may be, consent to the action in writing. Any such written consents shall be filed with the minutes of proceedings of the Board or committee.

2.12. Removal. Subject to the rights of the holders of any series of

Preferred Stock then outstanding, any directors, or the entire Board of Directors, may be removed from office at any time, but only by the affirmative vote of the holders of at least a majority of the voting power of all of the outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class.

2.13. Committees. The Board of Directors may designate one or more

committees, each committee to consist of one or more of the directors of the corporation, with such lawfully delegated powers and duties as it therefor confers, to serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously

appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the General Corporation Law of the State of Delaware, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-Laws for the Board of Directors.

2.14. Compensation of Directors. Directors may be paid such compensation

for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the corporation or any of its parent or subsidiary corporations in any other capacity and receiving compensation for such service.

2.15. Nomination of Director Candidates. Subject to the rights of holders

of any class or series of Preferred Stock then outstanding, nominations for the election of Directors may be made by the Board of Directors or a proxy committee appointed by the Board of Directors or by any stockholder entitled to vote in the election of Directors generally. However, any stockholder entitled to vote in the election of Directors generally may nominate one or more persons for election as Directors at a meeting only if timely notice of such stockholder's intent to make such nomination or nominations has been given in writing to the Secretary of the Corporation. To be timely, a stockholder nomination for a director to be elected at an annual meeting shall be received at the Corporation's principal executive offices not less than 120 calendar days in advance of the date that the Corporation's (or the Corporation's predecessor's) proxy statement was released to stockholders in connection with the previous year's annual meeting of stockholders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, or in the event of a nomination for director to be elected at a special meeting, notice by the stockholders to be

timely must be received not later than the close of business on the tenth day following the day on which such notice of the date of the special meeting was mailed or such public disclosure was made. Each such notice shall set forth: (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote for the election of directors on the date of such notice and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (d) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, had the nominee been nominated, or intended to be nominated, by the Board of Directors; and (e) the consent of each nominee to serve as a director of the Corporation if so elected.

In the event that a person is validly designated as a nominee in accordance with this Section 2.15 and shall thereafter become unable or unwilling to stand for election to the Board of Directors, the Board of Directors or the stockholder who proposed such nominee, as the case may be, may designate a substitute nominee upon delivery, not fewer than five days prior to the date of the meeting for the election of such nominee, of a written notice to the Secretary setting forth such information regarding such substitute nominee as would have been required to be delivered to the Secretary pursuant to this Section 2.15 had such substitute nominee been initially proposed as a nominee. Such notice shall include a signed consent to serve as a director of the Corporation, if elected, of each such substitute nominee.

If the chairman of the meeting for the election of Directors determines that a nomination of any candidate for election as a Director at such meeting was not made in accordance with the applicable provisions of this Section 2.15, such nomination shall be void; provided, however, that nothing in this Section 2.15 shall be deemed to limit any voting rights upon the occurrence of dividend arrearages provided to holders of Preferred Stock pursuant to the Preferred Stock designation for any series of Preferred Stock.

Article 3. Officers

3.1. Enumeration. The officers of the corporation shall consist of a

President and Chief Executive Officer, a Secretary, a Chief Financial Officer and such other officers with such other titles as the Board of Directors shall determine, including, at the discretion of the Board of Directors, a Chairman of the Board, and one or more Vice Presidents and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2. Election. Officers shall be elected annually by the Board of

Directors at its first meeting following the annual meeting of stockholders.
Officers may be appointed by the Board of Directors at any other meeting.

3.3. Qualification. No officer need be a stockholder. Any two or more

offices may be held by the same person.

3.4. Tenure. Except as otherwise provided by law, by the Certificate of

Incorporation or by these By-Laws, each officer shall hold office until his
successor is elected and qualified, unless a different term is specified in the
vote appointing him, or until his earlier death, resignation or removal.

3.5. Resignation and Removal. Any officer may resign by delivering his

written resignation to the corporation at its principal office or to the
President or Secretary. Such resignation shall be effective upon receipt unless
it is specified to be effective at some other time or upon the happening of some
other event. Any officer may be removed at any time, with or without cause, by
the Board of Directors.

3.6. Chairman of the Board. The Board of Directors may appoint a Chairman

of the Board. If the Board of Directors appoints a Chairman of the Board, he
shall perform such duties and possess such powers as are assigned to him by the
Board of Directors. Unless otherwise provided by the Board of Directors, he
shall preside at all meetings of the stockholders, and, if he is a director, at
all meetings of the Board of Directors.

3.7. President. The President shall, subject to the direction of the Board

of Directors, have responsibility for the general management and control of the
business and affairs of the Corporation and shall perform all duties and have
all powers which are commonly incident to the office of chief executive or which
are delegated to him or her by the Board of Directors. The President shall be
the Chief Executive Officer of the corporation. The President shall perform
such other duties and shall have such other powers as the Board of Directors may
from time to time prescribe. He or she shall have power to sign stock
certificates, contracts and other instruments of the Corporation which are
authorized and shall have general supervision and direction of all of the other
officers, employees and agents of the Corporation, other than the Chairman of
the Board.

3.8. Vice Presidents. Any Vice President shall perform such duties and

possess such powers as the Board of Directors or the President may from time to
time prescribe. In the event of the absence, inability or refusal to act of the
President, the Vice President (or if there shall be more than one, the Vice
Presidents in the order determined by the Board of Directors) shall perform the
duties of the President and when so performing shall have at the powers of and

be subject to all the restrictions upon the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.9. Secretary and Assistant Secretaries. The Secretary shall perform such

duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the Secretary, including, without limitation, the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to keep a record of the proceedings of all meetings of stockholders and the Board of Directors, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

3.10. Chief Financial Officer. Unless otherwise designated by the Board

of Directors, the Chief Financial Officer shall be the Treasurer. The Chief Financial Officer shall perform such duties and shall have such powers as may from time to time be assigned to him by the Board of Directors or the President. In addition, the Chief Financial Officer shall perform such duties and have such powers as are incident to the office of chief financial officer, including without limitation, the duty and power to keep and be responsible for all funds and securities of the corporation, to maintain the financial records of the Corporation, to deposit funds of the corporation in depositories as authorized, to disburse such funds as authorized, to make proper accounts of such funds, and to render as required by the Board of Directors accounts of all such transactions and of the financial condition of the corporation.

3.11. Salaries. Officers of the corporation shall be entitled to such

salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

3.12. Delegation of Authority. The Board of Directors may from time to

time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Article 4. Capital Stock

4.1. Issuance of Stock. Unless otherwise voted by the stockholders and

subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation or the whole or any part of any unissued balance of the authorized capital stock of the corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such consideration and on such terms as the Board of Directors may determine.

4.2. Certificates of Stock. Every holder of stock of the corporation shall

be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by him in the corporation. Each such certificate shall be signed by, or in the name of the corporation by, the Chairman or Vice-Chairman, if any, of the Board of Directors, or the President or a Vice President, and the Chief Financial Officer, or the Secretary or an Assistant Secretary of the corporation. Any or all of the signatures on the certificate may be a facsimile.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, the By-Laws, applicable securities laws or any agreement among any number of shareholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

4.3. Transfers. Except as otherwise established by rules and regulations

adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by the By-Laws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the corporation in accordance with the requirements of these By-Laws.

4.4. Lost, Stolen or Destroyed Certificates. The corporation may issue a

new certificate of stock in place of any previously saved certificate alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the

Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.5. Record Date. The Board of Directors may fix in advance a date as a

record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or to express consent (or dissent) to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, concession or exchange of stock, or for the purpose of any other lawful action. Such record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Article 5. General Provisions -----

5.1. Fiscal Year. The fiscal year of the corporation shall be as fixed by

the Board of Directors.

5.2. Corporate Seal. The corporate seal shall be in such form as shall be

approved by the Board of Directors.

5.3. Waiver of Notice. Whenever any notice whatsoever is required to be

given by law, by the Certificate of Incorporation or by these By-Laws, a waiver of such notice either in writing signed by the person entitled to such notice or such person's duly authorized attorney, or by telecopy, telegraph, cable or any other available method, whether before, at or after the time stated in such waiver, or the appearance of such person or persons at such meeting in person or by proxy, shall be deemed equivalent to such notice.

5.4. Actions with Respect to Securities of Other Corporations. Except as

the Board of Directors may otherwise designate, the President or any officer of the corporation authorized by the President shall have the power to vote and otherwise act on behalf of the corporation, in person or proxy, and may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact to this corporation (with or without power of substitution) at any meeting of stockholders or shareholders (or with respect to any action of stockholders) of any other corporation or organization, the securities of which may be held by this corporation and otherwise to exercise any and all rights and powers which this corporation may possess by reason of this corporation's ownership of securities in such other corporation or other organization.

5.5. Evidence of Authority. A certificate by the Secretary, or an

Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6. Certificate of Incorporation. All references in these By-Laws to the

Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time.

5.7. Severability. Any determination that any provision of these By-Laws

is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-Laws.

5.8. Pronouns. All pronouns used in these By-Laws shall be deemed to refer

to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

5.9. Notices. Except as otherwise specifically provided herein or required

by law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by prepaid telegram, mailgram, telecopy or commercial courier service. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. The time when such notice shall be deemed to be given shall be the time such notice is received by such stockholder, director, officer, employee or agent, or by any person accepting such notice on behalf of such person, if hand delivered, or the time such notice is dispatched, if delivered through the mails or by telegram or mailgram.

5.10. Reliance Upon Books, Reports and Records. Each director, each

member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation, including reports made to the Corporation by any of its officers, by an independent certified public accountant, or by an appraiser selected with reasonable care.

5.11. Time Periods. In applying any provision of these By-Laws which

require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

5.12. Facsimile Signatures. In addition to the provisions for use of

facsimile signatures elsewhere specifically authorized in these By-Laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Article 6. Amendments

6.1. By the Board of Directors. Except as is otherwise set forth in these

By-Laws, these By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present.

6.2. By the Stockholders. Except as otherwise set forth in these By-Laws,

these By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the affirmative vote of the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at any annual meeting of stockholders, or at any special meeting of stockholders, provided notice of such alteration, amendment, repeal or adoption of new By-Laws

shall have been stated in the notice of such special meeting.

Article 7. Indemnification of Directors and Officers.

7.1. Right to Indemnification. Each person who was or is made a party or

is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative ("proceeding"), by reason of the fact that he or she or a person of whom he or

she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, or of a Partnership, joint venture, trust or other enterprise, including service with

respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer or employee or in any other capacity while serving as a director, officer or employee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by Delaware Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said Law permitted the Corporation to provide prior to such amendment) against all expenses, liability and loss reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that,

except as provided in Section 7.2 of this Article 7, the Corporation shall indemnify any such person seeking indemnity in connection with an action, suit or proceeding (or part thereof) initiated by such person only if (a) such indemnification is expressly required to be made by law, (b) the action, suit or proceeding (or part thereof) was authorized by the Board of Directors of the Corporation, (c) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under the Delaware General Corporation Law, or (d) the action, suit or proceeding (or part thereof) is brought to establish or enforce a right to indemnification under an indemnity agreement or any other statute or law or otherwise as required under Section 145 of the Delaware General Corporation Law. Such right shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, unless the Delaware General Corporation

Law then so prohibits, the payment of such expenses incurred by a director or officer of the Corporation in his or her capacity as a director or officer (and not in any other capacity in which service was or is tendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of such proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it should be determined ultimately that such director or officer is not entitled to be indemnified under this Section or otherwise.

7.2. Right of Claimant to Bring Suit. If a claim under Section 7.1 is not

paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if such suit is not frivolous or brought in bad faith, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be

a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to this Corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

7.3. Indemnification of Employees and Agents. The Corporation may, to the -----
extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of related expenses, to any employee or agent of the Corporation to the fullest extent of the provisions of this Article with respect to the indemnification of and advancement of expenses to directors and officers of the Corporation.

7.4. Non-Exclusivity of Rights. The rights conferred on any person in -----
Sections 7.1 and 7.2 shall not be exclusive of any other right which such persons may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

7.5. Indemnification Contracts. The Board of Directors is authorized to -----
enter into a contract with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise,

including employee benefit plans, providing for indemnification rights equivalent to or, if the Board of Directors so determines, greater than, those provided for in this Article 7.

7.6. Insurance. The Corporation shall maintain insurance to the extent -----
reasonably available, at its expense, to protect itself and any such director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

7.7. Effect of Amendment. Any amendment, repeal or modification of any

provision of this Article 7 by the stockholders and the directors of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such amendment, repeal or modification.

AMENDED AND RESTATED BY-LAWS
OF DSP TECHNOLOGY INC.

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AMENDED AND RESTATED BY-LAWS
OF DSP TECHNOLOGY INC.

Article 1. Stockholders

THIS IS THE ONLY SECTION THAT'S AUTOPARAGRAPHED. REST IS MANUAL.

PLACE OF MEETINGS. ALL MEETINGS OF STOCKHOLDERS SHALL BE HELD AT SUCH PLACE WITHIN OR WITHOUT THE STATE OF DELAWARE AS MAY BE DESIGNATED FROM TIME TO TIME BY THE BOARD OF DIRECTORS OR THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OR, IF NOT SO DESIGNATED, AT THE REGISTERED OFFICE OF THE CORPORATION.

ANNUAL MEETING. THE ANNUAL MEETING OF STOCKHOLDERS FOR THE ELECTION

OF DIRECTORS AND FOR THE TRANSACTION OF SUCH OTHER BUSINESS AS MAY PROPERLY BE BROUGHT BEFORE THE MEETING SHALL BE HELD ON A DATE TO BE FIXED BY THE BOARD OF DIRECTORS OR THE PRESIDENT AND CHIEF EXECUTIVE OFFICER AT THE TIME AND PLACE TO BE FIXED BY THE BOARD OF DIRECTORS OR THE PRESIDENT AND STATED IN THE NOTICE OF THE MEETING. IF NO ANNUAL MEETING IS HELD IN ACCORDANCE WITH THE FOREGOING PROVISIONS, THE BOARD OF DIRECTORS SHALL CAUSE THE MEETING TO BE HELD AS SOON THEREAFTER AS CONVENIENT.

SPECIAL MEETINGS. SPECIAL MEETINGS OF STOCKHOLDERS MAY BE CALLED AT

ANY TIME ONLY BY THE BOARD OF DIRECTORS, THE CHAIRMAN OF THE BOARD, THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OR THE HOLDERS OF 10% OR MORE OF THE OUTSTANDING VOTING POWER OF THE CORPORATION. BUSINESS TRANSACTED AT ANY SPECIAL MEETING OF STOCKHOLDERS SHALL BE CONFINED TO THE PURPOSE OR PURPOSES STATED IN THE NOTICE OF MEETING.

NOTICE OF MEETINGS. WRITTEN NOTICE OF EACH MEETING OF STOCKHOLDERS,

WHETHER ANNUAL OR SPECIAL, SHALL BE GIVEN NOT LESS THAN TEN (10) NOR MORE THAN SIXTY (60) DAYS BEFORE THE DATE ON WHICH THE MEETING IS TO BE HELD, TO EACH STOCKHOLDER ENTITLED TO VOTE AT SUCH MEETING, EXCEPT AS OTHERWISE PROVIDED HEREIN

OR AS REQUIRED BY LAW (MEANING HERE AND HEREAFTER, AS REQUIRED FROM TIME TO TIME BY THE DELAWARE GENERAL CORPORATION LAW OR THE CERTIFICATE OF INCORPORATION).

THE NOTICES OF ALL MEETINGS SHALL STATE THE PLACE, DATE AND HOUR OF THE MEETING. THE NOTICE OF A SPECIAL MEETING SHALL STATE, IN ADDITION, THE PURPOSE OR PURPOSES FOR WHICH THE MEETING IS CALLED. IF MAILED, NOTICE IS GIVEN WHEN DEPOSITED IN THE UNITED STATES MAIL, POSTAGE PREPAID, DIRECTED TO THE STOCKHOLDER AT HIS ADDRESS AS IT APPEARS ON THE RECORDS OF THE CORPORATION.

VOTING LIST. THE OFFICER WHO HAS CHARGE OF THE STOCK LEDGER OF THE

CORPORATION SHALL PREPARE, AT LEAST TEN (10) DAYS BEFORE EACH MEETING OF STOCKHOLDERS, A COMPLETE LIST OF THE STOCKHOLDERS ENTITLED TO VOTE AT THE MEETING, ARRANGED IN ALPHABETICAL ORDER, AND SHOWING THE ADDRESS OF EACH STOCKHOLDER AND THE NUMBER OF SHARES REGISTERED IN THE NAME OF EACH STOCKHOLDER. SUCH LIST SHALL BE OPEN TO THE EXAMINATION OF ANY STOCKHOLDER, FOR ANY PURPOSE GERMANE TO THE MEETING, DURING ORDINARY BUSINESS HOURS, FOR A PERIOD OF AT LEAST TEN (10) DAYS PRIOR TO THE MEETING, AT A PLACE WITHIN THE CITY WHERE THE MEETING IS TO BE HELD, WHICH PLACE SHALL BE SPECIFIED IN THE NOTICE OF THE MEETING, OR IF NOT SO SPECIFIED, AT THE PLACE WHERE THE MEETING IS TO BE HELD. THE LIST SHALL ALSO BE PRODUCED AND KEPT AT THE TIME AND PLACE OF THE MEETING DURING THE WHOLE TIME OF THE MEETING, AND MAY BE INSPECTED BY ANY STOCKHOLDER WHO IS PRESENT. THIS LIST SHALL PREEMPTIVELY DETERMINE THE IDENTITY OF THE STOCKHOLDERS ENTITLED TO VOTE AT THE MEETING AND THE NUMBER OF SHARES HELD BY EACH OF THEM.

QUORUM. EXCEPT AS OTHERWISE PROVIDED BY LAW OR THESE BY-LAWS, THE

HOLDERS OF A MAJORITY OF THE SHARES OF THE CAPITAL STOCK OF THE CORPORATION ENTITLED TO VOTE AT THE MEETING, PRESENT IN PERSON OR REPRESENTED BY PROXY, SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS. IF A QUORUM SHALL FAIL TO ATTEND ANY MEETING, THE CHAIRMAN OF THE MEETING OR THE HOLDERS OF A MAJORITY OF THE SHARES OF STOCK ENTITLED TO VOTE WHO ARE PRESENT, IN PERSON OR BY PROXY, MAY ADJOURN THE MEETING TO ANOTHER PLACE, DATE OR TIME.

If a notice of any adjourned special meeting of stockholders is sent to all stockholders entitled to vote thereat, stating that it will be held with those present constituting a quorum, then except as otherwise required by law, those present at such adjourned meeting shall constitute a quorum, and all matters shall be determined by a majority of the votes cast at such meeting.

ADJOURNMENTS. ANY MEETING OF STOCKHOLDERS MAY BE ADJOURNED TO ANY

OTHER TIME AND TO ANY OTHER PLACE AT WHICH A MEETING OF STOCKHOLDERS MAY BE HELD UNDER THESE BY-LAWS BY THE HOLDERS OF A MAJORITY OF THE SHARES OF STOCK PRESENT OR REPRESENTED AT THE MEETING AND ENTITLED TO VOTE, ALTHOUGH LESS THAN A QUORUM, OR, IF NO STOCKHOLDER IS PRESENT, BY ANY OFFICER ENTITLED TO PRESIDE AT OR TO ACT AS SECRETARY OF SUCH MEETING. WHEN A MEETING IS ADJOURNED TO ANOTHER PLACE, DATE OR TIME, WRITTEN NOTICE NEED NOT BE GIVEN OF THE ADJOURNED MEETING IF THE PLACE, DATE AND TIME THEREOF ARE ANNOUNCED AT THE MEETING AT WHICH THE ADJOURNMENT IS TAKEN; PROVIDED, HOWEVER, THAT IF THE DATE OF ANY ADJOURNED MEETING IS MORE THAN THIRTY (30) DAYS AFTER THE DATE FOR WHICH THE MEETING WAS

ORIGINALLY NOTICED, OR IF A NEW RECORD DATE IS FIXED FOR THE ADJOURNED MEETING, WRITTEN NOTICE OF THE PLACE, DATE, AND TIME OF THE ADJOURNED MEETING SHALL BE GIVEN IN CONFORMITY HEREWITH. AT THE ADJOURNED MEETING, THE CORPORATION MAY TRANSACT ANY BUSINESS WHICH MIGHT HAVE BEEN TRANSACTED AT THE ORIGINAL MEETING.

VOTING AND PROXIES. EACH STOCKHOLDER SHALL HAVE ONE VOTE FOR EACH

SHARE OF STOCK ENTITLED TO VOTE HELD OF RECORD BY SUCH STOCKHOLDER AND A PROPORTIONATE VOTE FOR EACH FRACTIONAL SHARE SO HELD, UNLESS OTHERWISE PROVIDED BY LAW. EACH STOCKHOLDER OF RECORD ENTITLED TO VOTE AT A MEETING OF STOCKHOLDERS, MAY VOTE IN PERSON OR MAY AUTHORIZE ANY OTHER PERSON OR PERSONS TO VOTE OR ACT FOR HIM BY WRITTEN PROXY EXECUTED BY THE STOCKHOLDER OR HIS AUTHORIZED AGENT OR BY A TRANSMISSION PERMITTED BY LAW AND DELIVERED TO THE SECRETARY OF THE CORPORATION. NO STOCKHOLDER MAY AUTHORIZE MORE THAN ONE PROXY FOR HIS SHARES. ANY COPY, FACSIMILE TELECOMMUNICATION OR OTHER RELIABLE REPRODUCTION OF THE WRITING OR TRANSMISSION CREATED PURSUANT TO THIS SECTION MAY BE SUBSTITUTED OR USED IN LIEU OF THE ORIGINAL WRITING OR TRANSMISSION FOR ANY AND ALL PURPOSES FOR WHICH THE ORIGINAL WRITING OR TRANSMISSION COULD BE USED, PROVIDED THAT SUCH COPY, FACSIMILE TRANSMISSION OR OTHER REPRODUCTION SHALL BE A COMPLETE REPRODUCTION OF THE ENTIRE ORIGINAL WRITING OR TRANSMISSION.

ACTION AT MEETING. WHEN A QUORUM IS PRESENT AT ANY MEETING, ANY

ELECTION SHALL BE DETERMINED BY A PLURALITY OF THE VOTES CAST BY THE STOCKHOLDERS ENTITLED TO VOTE AT THE ELECTION, AND ALL OTHER MATTERS SHALL BE DETERMINED BY A MAJORITY OF THE VOTES CAST AFFIRMATIVELY OR NEGATIVELY ON THE MATTER (OR IF THERE ARE TWO OR MORE CLASSES OF STOCK ENTITLED TO VOTE AS SEPARATE CLASSES, THEN IN THE CASE OF EACH SUCH CLASS, A MAJORITY OF EACH SUCH CLASS PRESENT OR REPRESENTED AND VOTING AFFIRMATIVELY OR NEGATIVELY ON THE MATTER) SHALL DECIDE SUCH MATTER, EXCEPT WHEN A DIFFERENT VOTE IS REQUIRED BY EXPRESS PROVISION OF LAW, THE CERTIFICATE OF INCORPORATION OR THESE BY-LAWS.

All voting, including on the election of directors, but excepting where otherwise required by law, may be by a voice vote; provided, however, that upon demand therefor by a stockholder entitled to vote or his or her proxy, a stock vote shall be taken. Every stock vote shall be taken by ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. Every vote taken by ballots shall be counted by an inspector or inspectors appointed by the chairman of the meeting. The corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as an alternate inspector to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability.

NOTICE OF STOCKHOLDER BUSINESS. AT AN ANNUAL MEETING OF THE

STOCKHOLDERS, ONLY SUCH BUSINESS SHALL BE CONDUCTED AS SHALL HAVE BEEN PROPERLY BROUGHT BEFORE THE MEETING. TO BE PROPERLY BROUGHT BEFORE AN ANNUAL MEETING, BUSINESS MUST BE (I) SPECIFIED IN THE NOTICE OF MEETING (OR ANY SUPPLEMENT

THERE TO) GIVEN BY OR AT THE DIRECTION OF THE BOARD OF DIRECTORS, (II) PROPERLY BROUGHT BEFORE THE MEETING BY OR AT THE DIRECTION OF THE BOARD OF DIRECTORS, OR (III) PROPERLY BROUGHT BEFORE AN ANNUAL MEETING BY A STOCKHOLDER. FOR BUSINESS TO BE PROPERLY BROUGHT BEFORE AN ANNUAL MEETING BY A STOCKHOLDER, THE STOCKHOLDER MUST HAVE GIVEN TIMELY NOTICE THEREOF IN WRITING TO THE SECRETARY OF THE CORPORATION. TO BE TIMELY, A STOCKHOLDER PROPOSAL TO BE PRESENTED AT AN ANNUAL MEETING SHALL BE RECEIVED AT THE CORPORATION'S PRINCIPAL EXECUTIVE OFFICES NOT LESS THAN 120 CALENDAR DAYS IN ADVANCE OF THE DATE THAT THE CORPORATION'S (OR THE CORPORATION'S PREDECESSOR'S) PROXY STATEMENT WAS RELEASED TO STOCKHOLDERS IN CONNECTION WITH THE PREVIOUS YEAR'S ANNUAL MEETING OF STOCKHOLDERS, EXCEPT THAT IF NO ANNUAL MEETING WAS HELD IN THE PREVIOUS YEAR OR THE DATE OF THE ANNUAL MEETING HAS BEEN ADVANCED BY MORE THAN 30 CALENDAR DAYS FROM THE DATE CONTEMPLATED AT THE TIME OF THE PREVIOUS YEAR'S PROXY STATEMENT, NOTICE BY THE STOCKHOLDERS TO BE TIMELY MUST BE RECEIVED NOT LATER THAN THE CLOSE OF BUSINESS ON THE TENTH DAY FOLLOWING THE DAY ON WHICH THE DATE OF THE ANNUAL MEETING IS PUBLICLY ANNOUNCED.

A stockholder's notice to the Secretary of the Corporation shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting, (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (iii) the class and number of shares of the Corporation which are beneficially owned by the stockholder, and (iv) any material interest of the stockholder in such business.

CONDUCT OF BUSINESS. AT EVERY MEETING OF THE STOCKHOLDERS, THE

CHAIRMAN OF THE BOARD, IF THERE IS SUCH AN OFFICER, OR IF NOT, THE PERSON APPOINTED BY THE BOARD OF DIRECTORS, SHALL ACT AS CHAIRMAN. THE SECRETARY OF THE CORPORATION OR A PERSON DESIGNATED BY THE CHAIRMAN OF THE MEETING SHALL ACT AS SECRETARY OF THE MEETING. UNLESS OTHERWISE APPROVED BY THE CHAIRMAN OF THE MEETING, ATTENDANCE AT THE STOCKHOLDERS' MEETING IS RESTRICTED TO STOCKHOLDERS OF RECORD, PERSONS AUTHORIZED IN ACCORDANCE WITH SECTION 1.8 OF THESE BY-LAWS TO ACT BY PROXY, AND OFFICERS OF THE CORPORATION.

The Chairman of the meeting shall call the meeting to order, establish the agenda, and conduct the business of the meeting in accordance therewith or, at the Chairman's discretion, it may be conducted otherwise in accordance with the wishes of the stockholders in attendance. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

The Chairman shall also conduct the meeting in an orderly manner, rule

on the precedence of, and procedure on, motions and other procedural matters, and exercise discretion with respect to such procedural matters with fairness and good faith toward all those entitled to take part. The Chairman may impose reasonable limits on the amount of time taken up at the meeting on discussion in general or on remarks by any one stockholder. Should any person in attendance become unruly or obstruct the meeting proceedings, the Chairman shall have the power to have such person removed from participation. Notwithstanding anything in the By-Laws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 1.11 and Section 1.10 above. The Chairman of a meeting shall, if the facts warrant, determine and declare to the meeting that any proposed item of business was not brought before the meeting in accordance with the provisions of this Section 1.11 and Section 1.10, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

STOCKHOLDER ACTION BY WRITTEN CONSENT. ANY ACTION WHICH MAY BE

TAKEN AT ANY ANNUAL OR SPECIAL MEETING OF STOCKHOLDERS MAY BE TAKEN WITHOUT A

MEETING AND WITHOUT PRIOR NOTICE, IF A CONSENT IN WRITING, SETTING FORTH THE ACTIONS SO TAKEN, IS SIGNED BY THE HOLDERS OF OUTSTANDING SHARES HAVING NOT LESS THAN THE MINIMUM NUMBER OF VOTES WHICH WOULD BE NECESSARY TO AUTHORIZE OR TAKE SUCH ACTION AT A MEETING AT WHICH ALL SHARES ENTITLED TO VOTE THEREON WERE PRESENT AND VOTED. ALL SUCH CONSENTS SHALL BE FILED WITH THE SECRETARY OF THE CORPORATION AND SHALL BE MAINTAINED IN THE CORPORATE RECORDS. PROMPT NOTICE OF THE TAKING OF A CORPORATE ACTION WITHOUT A MEETING BY LESS THAN UNANIMOUS WRITTEN CONSENT SHALL BE GIVEN TO THOSE STOCKHOLDERS WHO HAVE NOT CONSENTED IN WRITING.

Article 2. Board of Directors

2.1. General Powers. The business and affairs of the corporation

shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law or the Certificate of Incorporation. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board until the vacancy is filled.

2.2. Number and Term of Office. The number of directors shall

initially be four (4) and, thereafter, shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption). All directors shall hold office until the expiration of the term for which elected and until their respective successors are elected, except in the case of the death, resignation

or removal of any director.

2.3. Vacancies and Newly Created Directorships Subject to the rights

of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification or other cause (including removal from office by a vote of the stockholders) may be filled only by a majority vote of the directors then in office, though less than a quorum, and directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders at which the term of office of the class to which they have been elected expires. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

2.4. Resignation. Any director may resign by delivering his written

resignation to the corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

2.5. Regular Meetings. Regular meetings of the Board of Directors may

be held without notice at such time and place, either within or without the State of Delaware, as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.6. Special Meetings. Special meetings of the Board of Directors may

be called at any time and place, within or without the State of Delaware, by the Chairman of the Board, the President and Chief Executive Officer, two or more directors, or by one director in the event that there is only a single director in office.

2.7. Notice of Special Meetings. Notice of any special meeting of

directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (i) by giving notice to such director in person or by telephone or electronic voice message system at least 24 hours in advance of the meeting, (ii) by sending a telegram, telecopy or telex, or delivering written notice by hand, to his last known business or home address at least 24 hours in advance of the meeting, or (iii) by mailing written notice to his last known business or home address at least three (3) day in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the

meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

2.8. Participation in Meetings by Telephone Conference Calls.

Directors or any members of any committee designated by the directors may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.9. Quorum. A majority of the total number of authorized directors

shall constitute a quorum at any meeting of the Board of Directors. In the event one or more of the directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by one for each such director so disqualified; provided, however, that in no case shall less than one-third (1/3) of the number so fixed constitute a quorum. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or at a meeting of a committee which authorizes a particular contract or transaction.

2.10 Action at Meeting. At any meeting of the Board of Directors at

which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Incorporation or these By-Laws.

2.11. Action by Consent. Any action required or permitted to be

taken at any meeting of the Board of Directors or of any committee of the Board of Directors may be taken without a meeting, if all members of the Board or committee, as the case may be, consent to the action in writing. Any such written consents shall be filed with the minutes of proceedings of the Board or committee.

2.12. Removal. Subject to the rights of the holders of any series of

Preferred Stock then outstanding, any directors, or the entire Board of Directors, may be removed from office at any time, but only by the affirmative vote of the holders of at least a majority of the voting power of all of the outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class.

2.13. Committees. The Board of Directors may designate one or more

committees, each committee to consist of one or more of the directors of the

corporation, with such lawfully delegated powers and duties as it therefor confers, to serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the General Corporation Law of the State of Delaware, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-Laws for the Board of Directors.

2.14. Compensation of Directors. Directors may be paid such

compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the corporation or any of its parent or subsidiary corporations in any other capacity and receiving compensation for such service.

2.15. Nomination of Director Candidates. Subject to the rights of

holders of any class or series of Preferred Stock then outstanding, nominations for the election of Directors may be made by the Board of Directors or a proxy committee appointed by the Board of Directors or by any stockholder entitled to vote in the election of Directors generally. However, any stockholder entitled to vote in the election of Directors generally may

nominate one or more persons for election as Directors at a meeting only if timely notice of such stockholder's intent to make such nomination or nominations has been given in writing to the Secretary of the Corporation. To be timely, a stockholder nomination for a director to be elected at an annual meeting shall be received at the Corporation's principal executive offices not less than 120 calendar days in advance of the date that the Corporation's (or the Corporation's predecessor's) proxy statement was released to stockholders in connection with the previous year's annual meeting of stockholders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, or in the event of a nomination for director to be elected at a special meeting, notice by the stockholders to be timely must be received not later than the close of business

on the tenth day following the day on which such notice of the date of the special meeting was mailed or such public disclosure was made. Each such notice shall set forth: (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote for the election of directors on the date of such notice and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (d) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, had the nominee been nominated, or intended to be nominated, by the Board of Directors; and (e) the consent of each nominee to serve as a director of the Corporation if so elected.

In the event that a person is validly designated as a nominee in accordance with this Section 2.15 and shall thereafter become unable or unwilling to stand for election to the Board of Directors, the Board of Directors or the stockholder who proposed such nominee, as the case may be, may designate a substitute nominee upon delivery, not fewer than five days prior to the date of the meeting for the election of such nominee, of a written notice to the Secretary setting forth such information regarding such substitute nominee as would have been required to be delivered to the Secretary pursuant to this Section 2.15 had such substitute nominee been initially proposed as a nominee. Such notice shall include a signed consent to serve as a director of the Corporation, if elected, of each such substitute nominee.

If the chairman of the meeting for the election of Directors determines that a nomination of any candidate for election as a Director at such meeting was not made in accordance with the applicable provisions of this Section 2.15, such nomination shall be void; provided, however, that nothing in this Section 2.15 shall be deemed to limit any voting rights upon the occurrence of dividend arrearages provided to holders of Preferred Stock pursuant to the Preferred Stock designation for any series of Preferred Stock.

Article 3. Officers

3.1. Enumeration. The officers of the corporation shall consist of a

President and Chief Executive Officer, a Secretary, a Chief Financial Officer and such other officers with such other titles as the Board of Directors shall determine, including, at the discretion of the Board of Directors, a Chairman of the Board, and one or more Vice Presidents and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2. Election. Officers shall be elected annually by the Board of

Directors at its first meeting following the annual meeting of stockholders.

Officers may be appointed by the Board of Directors at any other meeting.

3.3. Qualification. No officer need be a stockholder. Any two or

more offices may be held by the same person.

3.4. Tenure. Except as otherwise provided by law, by the Certificate

of Incorporation or by these By-Laws, each officer shall hold office until his
successor is elected and qualified, unless a different term is specified in the
vote appointing him, or until his earlier death, resignation or removal.

3.5. Resignation and Removal. Any officer may resign by delivering

his written resignation to the corporation at its principal office or to the
President or Secretary. Such resignation shall be effective upon

receipt unless it is specified to be effective at some other time or upon the
happening of some other event. Any officer may be removed at any time, with or
without cause, by the Board of Directors.

3.6. Chairman of the Board. The Board of Directors may appoint a

Chairman of the Board. If the Board of Directors appoints a Chairman of the
Board, he shall perform such duties and possess such powers as are assigned to
him by the Board of Directors. Unless otherwise provided by the Board of
Directors, he shall preside at all meetings of the stockholders, and, if he is a
director, at all meetings of the Board of Directors.

3.7. President. The President shall, subject to the direction of the

Board of Directors, have responsibility for the general management and control
of the business and affairs of the Corporation and shall perform all duties and
have all powers which are commonly incident to the office of chief executive or
which are delegated to him or her by the Board of Directors. The President
shall be the Chief Executive Officer of the corporation. The President shall
perform such other duties and shall have such other powers as the Board of
Directors may from time to time prescribe. He or she shall have power to sign
stock certificates, contracts and other instruments of the Corporation which are
authorized and shall have general supervision and direction of all of the other
officers, employees and agents of the Corporation, other than the Chairman of
the Board.

3.8. Vice Presidents. Any Vice President shall perform such duties

and possess such powers as the Board of Directors or the President may from time
to time prescribe. In the event of the absence, inability or refusal to act of
the President, the Vice President (or if there shall be more than one, the Vice
Presidents in the order determined by the Board of Directors) shall perform the
duties of the President and when so performing shall have at the powers of and

be subject to all the restrictions upon the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.9. Secretary and Assistant Secretaries. The Secretary shall perform

such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the Secretary, including, without limitation, the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to keep a record of the proceedings of all meetings of stockholders and the Board of Directors, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

3.10. Chief Financial Officer. Unless otherwise designated by the

Board of Directors, the Chief Financial Officer shall be the Treasurer. The Chief Financial Officer shall perform such duties and shall have such powers as may from time to time be assigned to him by the Board of Directors or the President. In addition, the Chief Financial Officer shall perform such duties and have such powers as are incident to the office of chief financial officer, including without limitation, the duty and power to keep and be responsible for all funds and securities of the corporation, to maintain the financial records of the Corporation, to deposit funds of the corporation in depositories as authorized, to disburse such funds as authorized, to make proper accounts of such funds, and to render as required by the Board of Directors accounts of all such transactions and of the financial condition of the corporation.

3.11. Salaries. Officers of the corporation shall be entitled to

such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

3.12. Delegation of Authority. The Board of Directors may from time

to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Article 4. Capital Stock

4.1. Issuance of Stock. Unless otherwise voted by the stockholders

and subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation or the whole or any part of any unissued balance of the authorized capital stock of the corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such consideration and on such terms as the Board of Directors may determine.

4.2. Certificates of Stock. Every holder of stock of the corporation

shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by him in the corporation. Each such certificate shall be signed by, or in the name of the corporation by, the Chairman or Vice-Chairman, if any, of the Board of Directors, or the President or a Vice President, and the Chief Financial Officer, or the Secretary or an Assistant Secretary of the corporation. Any or all of the signatures on the certificate may be a facsimile.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, the By-Laws, applicable securities laws or any agreement among any number of shareholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

4.3. Transfers. Except as otherwise established by rules and

regulations adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by the By-Laws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the corporation in accordance with the requirements of these By-Laws.

4.4. Lost, Stolen or Destroyed Certificates. The corporation may

issue a new certificate of stock in place of any previously saved certificate

alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.5. Record Date. The Board of Directors may fix in advance a date as

a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or to express consent (or dissent) to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, concession or exchange of stock, or for the purpose of any other lawful action. Such record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Article 5. General Provisions -----

5.1. Fiscal Year. The fiscal year of the corporation shall be as

fixed by the Board of Directors.

5.2. Corporate Seal. The corporate seal shall be in such form as

shall be approved by the Board of Directors.

5.3. Waiver of Notice. Whenever any notice whatsoever is required to

be given by law, by the Certificate of Incorporation or by these By-Laws, a waiver of such notice either in writing signed by the person entitled to such notice or such person's duly authorized attorney, or by telecopy, telegraph, cable or any other available method, whether before, at or after the time stated in such waiver, or the appearance of such person or persons at such meeting in

person or by proxy, shall be deemed equivalent to such notice.

5.4. Actions with Respect to Securities of Other Corporations. Except

as the Board of Directors may otherwise designate, the President or any officer of the corporation authorized by the President shall have the power to vote and otherwise act on behalf of the corporation, in person or proxy, and may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact to this corporation (with or without power of substitution) at any meeting of stockholders or shareholders (or with respect to any action of stockholders) of any other corporation or organization, the securities of which may be held by this corporation and otherwise to exercise any and all rights and powers which this corporation may possess by reason of this corporation's ownership of securities in such other corporation or other organization.

5.5. Evidence of Authority. A certificate by the Secretary, or an

Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6. Certificate of Incorporation. All references in these By-Laws to

the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time.

5.7. Severability. Any determination that any provision of these By-

Laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-Laws.

5.8. Pronouns. All pronouns used in these By-Laws shall be deemed to

refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

5.9. Notices. Except as otherwise specifically provided herein or

required by law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by prepaid telegram, mailgram, telecopy or commercial courier service. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. The time when such notice shall be deemed to be given shall be the time such notice is received by such stockholder, director, officer, employee or agent, or by any person accepting such notice on behalf of such person, if hand delivered, or the time such notice is dispatched, if delivered through the mails or by telegram or mailgram.

5.10. Reliance Upon Books, Reports and Records. Each director, each

member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation, including reports made to the Corporation by any of its officers, by an independent certified public accountant, or by an appraiser selected with reasonable care.

5.11. Time Periods. In applying any provision of these By-Laws which

require that an act be done or not done a specified

number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

5.12. Facsimile Signatures. In addition to the provisions for use of

facsimile signatures elsewhere specifically authorized in these By-Laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Article 6. Amendments

6.1. By the Board of Directors. Except as is otherwise set forth in

these By-Laws, these By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present.

6.2. By the Stockholders. Except as otherwise set forth in these By-

Laws, these By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the affirmative vote of the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at any annual meeting of stockholders, or at any special meeting of stockholders, provided notice of such alteration, amendment, repeal or adoption

of new By-Laws shall have been stated in the notice of such special meeting.

Article 7. Indemnification of Directors and Officers.

7.1. Right to Indemnification. Each person who was or is made a party

or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative ("proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, or of a Partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer or employee or in any other capacity while serving as a director, officer or employee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by Delaware Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said Law permitted the Corporation to provide prior to such amendment) against all expenses, liability and loss reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Section 7.2 of

this Article 7, the Corporation shall indemnify any such person seeking indemnity in connection with an action, suit or proceeding (or part thereof) initiated by such person only if (a) such indemnification is expressly required to be made by law, (b) the action, suit or proceeding (or part thereof) was authorized by the Board of Directors of the Corporation, (c) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under the Delaware General Corporation Law, or (d) the action, suit or proceeding (or part thereof) is brought to establish or enforce a right to indemnification under an indemnity agreement or any other statute or law or otherwise as required under Section 145 of the Delaware General Corporation Law. Such right shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition; provided,

however, that, unless the Delaware General Corporation Law then so prohibits,

the payment of such expenses incurred by a director or officer of the Corporation in his or her capacity as a director or officer (and not in any other capacity in which service was or is tendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of such proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it should be determined ultimately that such director or officer is not entitled to be indemnified under this Section or otherwise.

7.2. Right of Claimant to Bring Suit. If a claim under Section 7.1 is

not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of

the claim and, if such suit is not frivolous or brought in bad faith, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been

tendered to this Corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

7.3. Indemnification of Employees and Agents. The Corporation may, to

the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of related expenses, to any employee or agent of the Corporation to the fullest extent of the provisions of this Article with respect to the indemnification of and advancement of expenses to directors and officers of the Corporation.

7.4. Non-Exclusivity of Rights. The rights conferred on any person in

Sections 7.1 and 7.2 shall not be exclusive of any other right which such persons may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

7.5. Indemnification Contracts. The Board of Directors is authorized

to enter into a contract with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing for indemnification rights equivalent to or, if the Board of Directors so determines, greater than, those provided for in this Article 7.

7.6. Insurance. The Corporation shall maintain insurance to the

extent reasonably available, at its expense, to protect itself and any such director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware

7.7. Effect of Amendment. Any amendment, repeal or modification of

any provision of this Article 7 by the stockholders and the directors of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such amendment, repeal or modification.

CERTIFICATE OF SECRETARY

OF

DSP TECHNOLOGY INC.

(a Delaware corporation)

I, Jose M. Millares, the Secretary of DSP Technology Inc., a Delaware corporation (the "Corporation"), hereby certify that (i) Proposals 4A, 4B, 4C, 4D and 4E to the Shareholders Annual Meeting of DSP Technology Inc., a California corporation ("DSP California) and predecessor to the Corporation, were not approved by the requisite vote of shareholders and (ii) pursuant to the duly approved Agreement and Plan of Merger by and between the Corporation and DSP California, the By-Laws to which this Certificate is attached are the Amended and Restated By-Laws of the Corporation.

Executed effective on the 21st day of August, 1997.

/s/ Jose M. Millares

Jose M. Millares, Secretary

DSP TECHNOLOGY INC.
1991 STOCK OPTION PLAN

(As Amended By the Board Through February 21, 1997)

1. Name, Effective Date and Purpose.

(a) This document is intended to implement and govern the 1991 Stock Option Plan (the "Plan") of DSP TECHNOLOGY INC., a California corporation (the "Company"). The Plan provides for the granting of options that are intended to qualify as incentive stock options ("Incentive Stock Options") within the meaning of section 422(b) of the Internal Revenue Code of 1986, as amended (the "Code") and for the granting of options that are not intended to so qualify ("nonqualified stock options").

(b) The Plan is established effective as of April 23, 1991. The purpose of the Plan is to promote the growth and general prosperity of the Company. The Plan will permit the Company to grant options ("Options") to purchase shares of its common stock ("Common Stock"). The granting of Options will help the Company attract and retain the best available persons for positions of substantial responsibility and will provide certain key employees with an additional incentive to contribute to the success of the Company and its Affiliated Companies. For purposes of the Plan, the term "Affiliated Companies" shall mean any component member of a controlled group of corporations, as defined under section 1563 of the Code, in which the Company is also a component member, any Parent Corporation of the Company and any Subsidiary Corporation of the Company.

2. Administration.

(a) The Plan shall be administered by the Board of Directors of the Company (the "Board") and/or by a duly appointed committee of the Board as specified in Subsection 2(c) below. Any subsequent references in the Plan to the Board shall also mean the committee if such committee has been appointed and, unless the powers of the committee have been specifically limited, the committee shall have all of the powers of the Board granted herein, including, without limitation, the power to amend or terminate the Plan at any time, subject to the terms of the Plan and any applicable limitations imposed by law.

(b) The Board shall have sole authority, in its absolute discretion, to determine which of the eligible persons of the Company and its Affiliated Companies shall receive Options ("Optionees"), and, subject to the express

provisions and restrictions of the Plan, shall have sole authority, in its absolute discretion, to determine the time when Options shall be granted, the terms and conditions of an Option other than those terms and conditions fixed under the Plan, the number of shares of Common Stock which may be issued upon exercise of an Option and the means of payment for such shares, and shall have authority to do everything necessary or appropriate to administer the Plan, including but not limited to (i) setting different terms and conditions for different Options and (ii) interpreting the Plan. All decisions, determinations and interpretations of the Board shall be final and binding on all Optionees.

(c) The Board shall have the authority to delegate some or all of the powers granted to it pursuant to this Section 2 to a committee (the "Committee") appointed by the Board and consisting of not less than two (2) members of the Board. The Board may from time to time remove members from, or add members to, the Committee, and vacancies on the Committee shall be filled by the Board. All decisions, determinations and interpretations of the Committee shall be final and binding on all Optionees.

(d) Definitions.

(i) Restricted Shareholder: An individual who, at the time

an Option is granted under the Plan, owns stock possessing more than ten percent (10%) of the total combined voting power or value of all classes of stock of the employer corporation or of its Parent Corporation or Subsidiary Corporation, with stock ownership to be determined in light of the attribution rules set forth in section 424(d) of the Code.

(ii) Parent Corporation: A corporation as defined in

Section 424(e) of the Code.

(iii) Subsidiary Corporation: A corporation as defined in

Section 424(f) of the Code.

(iv) Officer: The president, principal financial officer,

principal accounting officer (or, if there is no such accounting officer, the controller), any vice president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company.

3. Eligibility. The Board may, in its discretion, grant one (1) or more

Options under the Plan to any employee (including officers and any director who is an employee) of the Company or any of its Affiliated Companies presently existing or hereinafter organized or acquired. Such options may be granted to

one (1) or more such employees without being granted to other eligible employees, as the Board may deem fit.

4. Stock to be Optioned. Options shall be for the purchase of shares of

Common Stock, subject to adjustment as provided in Section 20 below. Shares of Common Stock delivered upon the exercise of Options may be either previously unissued shares or outstanding shares. Subject to the limitations described in this Section 4 and adjustment as provided in Section 20, the maximum number of shares of Common Stock which may be issued under the Plan shall be one million eighteen thousand three hundred twenty-seven (1,018,327) shares (the "Maximum Shares"). The Company has a 1985 Incentive Stock Option Plan and 1985 Nonstatutory Stock Option Plan (the "1985 Plans") under which, as of April 23, 1991, (a) the Company had granted and there remained outstanding options to purchase one hundred seventy-four thousand four hundred thirty-three (174,433) shares of Common Stock (the "1985 Plan Options"), and (b) there remained one hundred three thousand eight hundred ninety-four (103,894) shares of Common Stock available for future grants (the "1985 Plan Available Shares"). Except as provided below, the Maximum Shares shall be deemed to include the number of shares subject to the 1985 Plan Options and the 1985 Plan Available Shares. The aggregate maximum number of shares of Common Stock which may be issued upon the exercise of Options, determined at any time, shall be equal to the Maximum Shares reduced by (a) the number of shares remaining subject to outstanding 1985 Plan Options, (b) the number of shares issued upon the exercise of 1985 Plan Options, and (c) the portion, if any, of the 1985 Plan Available Shares which are issued upon the exercise of options granted under the 1985 Plans subsequent to April 23, 1991. In the event that any outstanding option granted under the Plan for any reason expires or is terminated or canceled or shares of Common Stock subject to repurchase under the Plan are repurchased by the Company, the shares allocable to the unexercised portion of such option, or such repurchased shares, may again be subject to an Option grant under the Plan.

5. Option Exercise Price. The Option Exercise Price for shares of Common

Stock to be issued under the Plan shall be not less than the fair market value of such shares on the date on which the Option covering such shares is granted by the Board, except that if on the date on which such Option is granted the Optionee is a Restricted Shareholder, then such Option Exercise Price shall not be less than one hundred ten percent (110%) of the fair market value of the shares of Common Stock subject to the Option on the date on which such Option is granted by the Board. The fair market value of the shares of Common Stock for all purposes of the Plan is to be determined by the Board in its sole discretion, exercised in good faith.

6. Term of Plan. The Plan shall become effective on April 23, 1991 and

shall continue in effect until April 22, 2001, unless terminated earlier by action of the Board. No Option may be granted hereunder after April 22, 2001.

7. Exercise of Options. Subject to the actions, conditions and/or

limitations set forth in the Plan and/or any applicable Stock Option Agreement entered into hereunder, Options granted under the Plan shall be exercisable in accordance with the following rules:

(a) Options granted under the Plan shall first become exercisable in whole or in part at such time as the Board shall determine; provided, however, that no Option granted under the Plan may be exercised in whole or in part until six (6) months after the date on which the Option is granted by the Board (hereinafter the "Option Grant Date").

(b) Subject to the specific provisions of this Section 7, Options shall become exercisable at such times and in such installments (which may be cumulative) as the Board shall provide in the terms of each individual Option; provided, however, that by a resolution adopted after an Option is granted the Board may, on such terms and conditions as it may determine to be appropriate and subject to the specific provisions of this Section 7, accelerate the time at which such Option or installment thereof may be exercised. For purposes of the Plan, any accrued installment of an Option granted hereunder shall be referred to as an "Accrued Installment."

(c) An Option may be exercised when Accrued Installments accrue as provided in the terms under which such Option was granted and at any time thereafter within such period from the Option Grant Date as the Board shall provide in the terms of each individual Option, subject, however, to the restrictions contained in this Section 7. Except as provided in the following sentence, in no event shall any Option be exercised on or after the tenth (10th) anniversary of the Option Grant Date of such Option, regardless of the circumstances then existing (including, but not limited to, the death or termination of employment of the Optionee). If on the date on which any Option is granted the Optionee is a Restricted Shareholder, then in no event shall such Option be exercised on or after the fifth (5th) anniversary of the Option Grant Date of such Option, regardless of the circumstances then existing (including, but not limited to, the death or termination of employment of the Optionee). The date upon which the term of an Option as set by the Board shall expire shall be hereinafter designated as the "Option Term Date."

(d) A "Transfer of Control" shall be deemed to have occurred in the event any of the following occurs with respect to the Company.

(i) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the stock of the Company where the shareholders of the Company before such sale or exchange do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such sale or exchange;

(ii) a merger in which the Company is not the surviving corporation, other than a merger the principal purpose of which is to change the state of the Company's incorporation;

(iii) a merger in which the Company is the surviving

corporation where the shareholders of the Company before such merger do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such merger;

(iv) the sale, exchange, or transfer of all or substantially all of the Company's assets (other than a sale, exchange, or transfer to one (1) or more subsidiary corporations of the Company); or

(v) a liquidation or dissolution of the Company.

Notwithstanding the foregoing provisions of this Section 7, in the event of a Transfer of Control, the surviving, continuing, successor, or purchasing corporation or parent corporation thereof, as the case may be (the "Acquiring Corporation") shall either assume the Company's rights and obligations under outstanding stock option agreements or substitute options for the Acquiring Corporation's stock for such outstanding Options. In the event the Acquiring Corporation elects not to assume or substitute for such outstanding Options in connection with a merger described in clauses (ii) or (iii) above, the Board shall provide that any unexercisable and/or unvested portion of the outstanding Options shall be immediately exercisable and vested as of a date prior to the Transfer of Control, as the Board so determines; provided, however, that in no event shall Optionee's have less than a thirty (30) day period during which to exercise their Options. Notwithstanding the foregoing, in the event that the transaction constituting the Transfer of Control is not consummated, any unexercised unaccrued installments that had become exercisable and/or vested solely by reason of the provisions of this subsection 7(d) shall again become unaccrued and unexercisable as of the termination of such proposed transaction, subject, however, to such installments accruing pursuant to the normal accrual schedule provided in the terms under which such Option was granted. Any exercise of an installment prior to termination of such proposed transaction shall remain effective notwithstanding that such installment became exercisable solely by reason of the Company undertaking the transaction constituting the Transfer of Control. Any Options which are neither assumed or substituted for by the Acquiring Corporation nor exercised as of the date of the Transfer of Control shall terminate effective as of the date of the Transfer of Control.

(e) Subject to the provisions of Subsection 7(f) below involving the death or disability of an Optionee while an employee of the Company, as of the effective date of the termination of employment of an Optionee with the Company or an Affiliated Company for any reason other than death or disability (the "Termination Date"), any unexercised Accrued Installments of the Option granted hereunder to such terminated Optionee shall expire and become unexercisable as of the earlier of (i) the applicable Option Term Date, or (ii) ninety (90) days following such Termination Date; provided, however, that the Board may extend such ninety (90) day period in the case of a nonqualified stock option to a period not to exceed one (1) year following the Termination Date, but in no event beyond the applicable Option Term Date. Any installments of an Option which have not accrued as of the Optionee's Termination Date shall expire and become unexercisable as of such Termination Date even if the reason for the Optionee's termination is death or disability. Any portion of an Option that

expires hereunder shall remain unexercisable and be of no effect whatsoever after such expiration notwithstanding that such Optionee may be reemployed by the Company or an Affiliated Company.

(f) Notwithstanding the foregoing provisions of this Section 7, in the event of the death of an Optionee while an employee of the Company or an Affiliated Company, or in the event of the termination of employment by reason of the Optionee's disability, any unexercised Accrued Installments of the Option granted hereunder to such Optionee shall expire and become unexercisable as of the earlier of (i) the applicable Option Term Date, or (ii) the first anniversary of the date of death of such Optionee (if applicable), or (iii) the first anniversary of the date of the termination of employment by reason of disability (if applicable). Any such Accrued Installments of a deceased Optionee may be exercised prior to their expiration by (and only by) the person or persons to whom the Optionee's Option rights shall pass by will or by the laws of descent and distribution, if applicable, subject, however, to all of the terms and conditions of the Plan and the applicable Stock Option Agreement governing the exercise of Options granted hereunder. For purposes of this Subsection 7(f), an Optionee shall be deemed employed by the Company or an Affiliated Company during any period of leave of absence from active employment as authorized by the Company or an Affiliated Company, as the case may be.

(g) An Option shall be deemed exercised when written notice of such exercise has been given to the Company at its principal business office by the person entitled to exercise the Option and full payment in cash or cash equivalent (or with shares of Common Stock pursuant to Section 9 below or by the assignment of the proceeds of a sale of some or all of the shares of Common Stock being acquired upon the exercise of the Option pursuant to Section 10 below) for the shares of Common Stock with respect to which the Option is exercised has been received by the Company. Until the issuance of the certificate or certificates for the shares of Common Stock, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to optioned shares notwithstanding the exercise of the Option. No adjustment shall be made for a dividend or other rights for which the record date is prior to the date the certificate or certificates are issued except as provided in Section 20 below.

(h) An Option may be exercised in accordance with this Section 7 as to all or any portion of the shares of Common Stock covered by any Accrued Installment of the Option from time to time during the applicable option period, but shall not be exercisable with respect to fractions of a share.

(i) As soon as practicable after any proper exercise of an Option in accordance with the provisions of the Plan, the Company shall, without charging transfer or issue tax to the Optionee, deliver to the Optionee at its principal business office, or such other place as shall be mutually acceptable, a certificate or certificates representing the shares of Common Stock as to which the Option has been exercised. The time of issuance and delivery of the shares of Common Stock may be postponed by the Company for such period as may be required for its with reasonable diligence to comply with any applicable listing requirements of any national or regional securities exchange and any law or

regulation applicable to the issuance and delivery of such shares.

8. Authorized to Grant Options and Shareholder Approval. Options granted

under the Plan shall be conditioned upon the Company obtaining any required permit from the Department of Corporations of the State of California and/or other appropriate governmental agencies, free of any conditions not acceptable to the Board, authorizing the Company to grant such Options; provided, however, that such condition shall lapse as of the effective date of issuance of such permit(s) in a form to which the Company does not object within sixty (60) days. The grant of Options under the Plan also is conditioned on approval of the Plan by the shareholders of the

Company; and no Option granted hereunder shall be effective or exercisable unless and until the Plan has been so approved.

9. Payment of Option Exercise Price with Company Stock. The Board may

provide that, upon exercise of an Option, the Optionee may elect to pay for some or all of the shares of Common Stock underlying the Option with shares of Common Stock of the Company previously acquired and owned at the time of exercise by the Optionee, provided that the Optionee will make representations and warranties satisfactory to the Company regarding his or her title to the shares used to effect the purchase, including, without limitation, representations and warranties that the Optionee has good and marketable title to such shares free and clear of any and all liens, encumbrances, charges, equities, claims, security interests, options, or restrictions and has full power to deliver such shares without obtaining the consent or approval of any person or governmental authority other than those which have already given consent or approval in a form satisfactory to the Company. The equivalent dollar value of the shares of Common Stock used to effect the purchase shall be the fair market value of the shares on the date of the exercise as determined by the Board in its sole discretion, exercised in good faith.

10. Payment of Option Exercise Price with Same-Day-Sale Proceeds. The

Board may provide that the Optionee may pay for some or all of the shares of Common Stock underlying the Option by the assignment of the proceeds of a sale of some or all of the shares of Common Stock being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System). The Company reserves, at any and all times, the right, in the Company's sole and absolute discretion, to establish, decline to approve and/or terminate any program and/or procedures for the exercise of Options by means of an assignment of the proceeds of a sale of some or all of the shares of Common Stock to be acquired upon such exercise.

11. Stock Option Agreement. The terms and conditions of Options granted

under the Plan shall be evidenced by a Stock Option Agreement (hereinafter

referred to as the "Agreement") executed by the Company and the person to whom the Option is granted. Each Agreement shall contain the following provisions:

(a) A provision fixing the number of shares of Common Stock which may be issued upon exercise of the Option;

(b) A provision establishing the Option Exercise Price per share;

(c) A provision establishing the times and the installments in which Options may be exercised;

(d) A provision incorporating therein the Plan by reference;

(e) A provision clarifying which Options are intended to be Incentive Stock Options and which are intended to be nonqualified stock options;

(f) A provision fixing the maximum duration of the Option as set by the Board; provided, however, that such period shall not be more than ten (10) years from the Option Grant Date;

(g) Such representations and warranties by the Optionee as may be required by Section 21 below or as may be required by the Board in its sole discretion;

(h) Any other restrictions (in addition to those established under the Plan) as may be established by the Board with respect to the exercise of the Option, the transfer of the Option, and/or the transfer of the shares of Common Stock purchased by exercise of the Option, provided that such restrictions are not in conflict with the Plan; and

(i) Such other terms and conditions not inconsistent with the Plan as may be established by the Board.

12. Taxes, Fees and Expenses. The Company shall pay all original issue

and transfer taxes (but not income taxes, if any) with respect to the grant of Options and/or the issue and transfer of shares of Common

Stock pursuant to the exercise of such Options, and all other fees and expenses necessarily incurred by the Company in connection therewith, and will from time to time use its best efforts to comply with all laws and regulations which, in the opinion of legal counsel for the Company, shall be applicable thereto.

13. Withholding of Taxes. The grant of Options hereunder and the issuance

of shares of Common Stock pursuant to the exercise of such Options is conditioned upon the Company's reservation of the right to withhold, in accordance with any applicable law, from any compensation payable to the Optionee any taxes required to be withheld by federal, state, or local law as a result of the grant or exercise of any such Option.

14. Amendment or Termination of the Plan.

(a) The Board may amend the Plan from time to time in such respects as the Board may deem advisable; provided, however, that no such amendment shall operate to (i) affect adversely an Optionee's right under the Plan with respect to any Option granted hereunder prior to the adoption of such amendment, except as may be necessary, in the judgment of legal counsel for the Company, to comply with any applicable law or regulation, or (ii) increase the maximum aggregate number of shares of Common Stock which may be optioned and sold under the Plan or change the class of persons eligible to receive Options under the Plan unless such increase or change has been approved by the shareholders of the Company.

(b) The Board may at any time terminate the Plan. Any such termination of the Plan shall not, without the written consent of the Optionee, alter the terms of Options already granted and such Options shall remain in full force and effect as if the Plan had not been terminated.

15. Options Not Transferable. Options granted under the Plan may not be

sold, pledged, hypothecated, assigned, encumbered, gifted, or otherwise transferred or alienated in any manner, either voluntarily or involuntarily by operation of law, other than by will or by the laws of descent or distribution, and may be exercised during the lifetime of an Optionee only by such Optionee.

16. Restrictions on Transfer of Stock. Shares of Common Stock issued

pursuant to the exercise of an Option granted under the Plan (hereinafter, the "Optioned Stock"), or any interest in such Optioned Stock, may be sold, pledged, hypothecated, assigned, encumbered, gifted, or otherwise transferred or alienated in any manner by the holder(s) thereof. However, the Board, in its absolute discretion, may impose such restrictions on the transferability of the Optioned Stock as it deems appropriate and any such restriction shall be set forth in the respective Stock Option Agreement and may be referred to on the certificate or certificates evidencing such shares. The Board may require the Optionee to give the Company prompt notice of any disposition of shares of Optioned Stock acquired by exercise of an Incentive Stock Option within two (2) years from the date of granting such Option or one (1) year after the transfer of such shares to such Optionee. The Board may direct that the certificate or certificates evidencing shares of Optioned Stock refer to such requirement to give prompt notice of such disposition. All transfers of Optioned Stock shall also be subject to any representations or warranties required under Section 21 below and also subject to compliance with any applicable federal, state, or other local law, regulation, or rule governing the sale or transfer of stock or securities.

17. Reservation of Shares of Common Stock. The Company, during the term

of the Plan, shall at all times keep available such number of shares of its Common Stock as shall be sufficient to satisfy the requirements of the Plan.

18. Restrictions on Issuance of Shares. The Company, during the term of

the Plan, will use its best efforts to seek to obtain from the appropriate regulatory agencies any requisite authorization in order to issue and sell such number of shares of its Common Stock as shall be sufficient to satisfy the requirements of the Plan. The inability of the Company to obtain from any such regulatory agency having jurisdiction thereof the authorization deemed by legal counsel for the Company to be necessary to the lawful issuance and sale of any shares of its Common Stock hereunder or the inability of the Company to confirm to its satisfaction that any issuance and sale of any such shares will meet applicable legal requirements shall relieve the Company of any liability in respect of the non-issuance or sale of such shares as to which such authorization or confirmation has not been obtained.

19. Notices. Any notice to be given to the Company pursuant to the

provisions of the Plan shall be addressed to the Company in care of its Secretary at its principal business office, and any notice to be given to a

person to whom an Option is granted hereunder shall be addressed to him or her at the address given beneath his or her signature on his or her Stock Option Agreement, or at such other address as such person or his or her transferee (upon the transfer of Optioned Stock) may hereafter designate in writing to the Company. Any such notice shall be deemed duly given when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, registered or certified, and deposited, postage and registry or certification fee prepaid, in a post office or branch post office regularly maintained by the United States Postal Service. It shall be the obligation of each Optionee and each transferee holding Optioned Stock to provide the Secretary of the Company, by letter mailed as provided hereinabove, with written notice of his or her correct mailing address.

20. Adjustments Upon Changes in Capitalization. If the outstanding shares

of Common Stock of the Company are increased, decreased, changed into, or exchanged for a different number or kind of shares of the Company through reorganization, recapitalization, reclassification, stock dividend, stock split, or reverse stock split, then upon proper authorization of the Board an appropriate and proportionate adjustment shall be made in the number or kind of shares which may be issued upon exercise of Options granted under the Plan as determined under Section 4, in the number and kind of shares subject to outstanding Options, and in the Option Exercise Price of outstanding Options; provided, however, that no such adjustments need be made if, upon the advice of legal counsel, the Board determines that such adjustments may result in the receipt of federally taxable income to holders of Options granted hereunder or the holders of Common Stock or other classes of the Company's securities.

21. Representations and Warranties. As a condition to the exercise of any

portion of an Option, the Company may require the person exercising such Option

to make any representation and/or warranty to the Company as may, in the judgment of legal counsel for the Company, be required under any applicable law or regulation, including, but not limited to, a representation and warranty that the shares are being acquired only for investment and without any present intention to sell or distribute such shares if, in the opinion of legal counsel for the Company, such a representation is required under the Securities Act of 1933, as amended, or any other applicable law, regulation, or rule of any governmental agency.

22. No Enlargement of Employee Rights. The Plan is purely voluntary on

the part of the Company, and while the Company hopes to continue it indefinitely, the continuance of the Plan shall not be deemed to constitute a contract between the Company and any employee, or to be consideration for or a condition of the employment of any employee. Nothing contained in the Plan shall be deemed to give any employee the right to be retained in the employ of the Company or its Affiliated Companies, or to interfere with the right of the Company or an Affiliated Company to discharge or retire any employee thereof at any time for any reason, with or without cause. No employee shall have any right to or interest in Options authorized hereunder prior to the grant of such an Option to such employee, and upon such grant he or she shall have only such rights and interests as are expressly provided herein, subject, however, to all applicable provisions of the Articles of Incorporation of the Company, as the same may be amended from time to time.

23. Legends on Certificates. Each certificate representing shares of

Common Stock issued under the Plan shall bear whatever legends are required by federal or state law or by any governmental agency. In particular, unless an appropriate registration statement is filed pursuant to the Securities Act of 1933, as amended, with respect to the shares of Common Stock issuable under the Plan, each certificate representing such shares of Common Stock shall be endorsed on its face with the following legend or its equivalent:

"Neither the Option pursuant to which the shares represented by this certificate are issued nor said shares have been registered under the Securities Act of 1933, as amended (the "Act"). Transfer or sale of such securities or any interest therein is unlawful except after registration, or pursuant to an exemption from the registration requirements, as provided in the Act and the regulations thereunder."

A copy of the Plan shall be delivered to the Secretary of the Company and shall be shown by him or her to any eligible person making reasonable inquiry concerning it.

24. Specific Performance. The Options granted under the Plan cannot be

readily purchased or sold in the open market, and, for that reason among others, the Company and its shareholders will be irreparably damaged in the event that the Plan is not specifically enforced. Should any dispute arise concerning the sale or

other disposition of an Option, an injunction may be issued restraining such sale or other disposition of such Option pending the determination of such controversy. In the event of any controversy concerning the right or obligation to purchase or sell any such Option, such right or obligation shall be enforceable in a court of equity by a decree of specific performance. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which the parties may have.

25. Invalid Provisions. In the event that any provision of the Plan is

found to be invalid or otherwise unenforceable under any applicable law, such invalidity or unenforceability shall not be construed as rendering any other provisions contained herein invalid or unenforceable, and all such other provisions shall be given full force and effect to the same extent as though the invalid or unenforceable provision was not contained herein.

26. Applicable Law. The Plan shall be governed by and construed in

accordance with the laws of the State of California.

27. Reports to Optionees. The Company, during the term of the Plan, will

distribute to all Optionees a copy of its annual financial statements in accordance with the requirements of applicable state law.

28. Successors and Assigns. The Plan shall be binding on and inure to the

benefit of the Company or its successors and the employees to whom an Option is granted hereunder, and such employees' heirs, executors, administrators, legatees, personal representatives, assignees and transferees.

29. Mergers and Acquisitions.

(a) If the Company at any time should succeed to the business of another corporation through a merger or consolidation, or through the acquisition of assets or stock of such corporation, Options may be granted under the Plan to option holders of such corporation or its subsidiaries, in substitution for options or rights to purchase stock of such corporation held by them at the time of succession. The Board shall have sole and absolute discretion to determine the extent to which such substitute Options shall be granted (if at all), the person or persons to receive such substitute Options (who need not be all option holders of such corporation), the number of Options to be received by each such person, the Option Exercise Price of such Option, and the terms and conditions of such substitute Options; provided, however, that the terms and conditions of the substitute Options shall comply with the provisions of section 424(a) of the Code, such that the excess of the aggregate fair market value of the shares subject to such substitute Option immediately after the substitution or assumption over the aggregate option exercise price of such shares is not more than the excess of the aggregate fair market value of

all shares subject to the substitute Option immediately before such substitution or assumption over the aggregate option exercise price of such shares, and the substitute Option or the assumption of the old option does not give the holder thereof additional benefits which he or she did not have under such old option.

(b) Notwithstanding anything to the contrary herein, no Option shall be granted, nor any action taken, permitted, or omitted, which would cause the Plan, or any Options granted hereunder as to which Rule 16b-3 under the Securities Exchange Act of 1934, as amended, may apply, not to comply with such rule.

IN WITNESS WHEREOF, the undersigned Secretary of the Company certifies that the foregoing DSP Technology Inc. 1991 Stock Option Plan was duly adopted by the Board of Directors on the April 23, 1991 and subsequently amended on April 1, 1993, February 24, 1994, April 14, 1995, February 22, 1996 and February 21, 1997.

DSP TECHNOLOGY INC.

By: /s/ Jose M. Millares

Jose M. Millares, Jr., Secretary

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