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METALCLAD CORP
Form 8-K
December 21, 2001

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{\rtf1\ansi\deff0{\fonttbl{\f0\fnil\fcharset0 Courier New;}}
\viewkind4\uc1\pard\qc\lang1033\f0\fs20 SECURITIES AND EXCHANGE COMMISSION\par
Washington, D.C. 20549\par
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\par
FORM 8-K\par
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CURRENT REPORT\par
\par
PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES ACT OF 1934\par
Date of Report (Date of earliest event reported) December 10, 2001\par
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\par
METALCLAD CORPORATION \par
(Exact name of registrant as specified in its charter)\par
\pard\par
\par
\par
                Delaware                                0-2000\par
                (State or other jurisdiction)              (Commission File Number)\par
\par
                95-2368719\par
                (I.R.S. Employer Identification No.)\par
\par
                2 Corporate Plaza, Suite 125\par
                Newport Beach, CA                            92660\par
                (Address of Principal Executive Office)      (Zip Code)\par
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\par
                Registrant's telephone number, including area code (949) 719-1234\par
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\par
                Item 5. Other Events.\par
\par
                On December 10, 2001, the Company entered into a Non-Recourse Security \par
                And Pledge Agreement ("Pledge Agreement") with Blake Capital Partners LLC \par
                ("Blake") and Mr. Wayne Mills ("Mills") and Bruce H. Haglund, Esq., whereby \par
                Mills and Blake pledged 500,000 shares (the "Pledged Shares") of Metalclad \par
                stock to guarantee a loan in the amount of $1,250,000 from the Company to \par
                Blake. A copy of the Pledge Agreement is attached hereto as Exhibit A. The \par
                note is memorialized in the Non-Recourse Secured Note, dated December 10, \par
                2001, between and among Metalclad, Blake, and Mr. Mills (the "Note"), a \par
                copy of which is attached hereto as Exhibit B. Under the terms of the \par
                Pledge Agreement, Mills shall retain all voting power with respect to the \par
                Pledged Shares unless and until (1) Metalclad cancels such shares as a \par
                result of Blake defaulting on the Note, or as a result of Blake and/or Mr. \par
                Mills defaulting under the Pledge Agreement and failing to cure the default \par
                pursuant to the terms of the Pledge Agreement and/or the Note, or as a \par
                result of Blake requesting cancellation of such shares to satisfy its \par
                obligations under the Note, or (2) Blake requests the sale of such shares \par
                to satisfy its obligations under the Note. As of the date of this filing, \par
                the Company's shares traded at approximately $2.05, valuing the \par
                collateral at $1.025 million.\par
\par
                On December 14, 2001, Mr. Mills and Blake Capital filed an amended \par
                Schedule 13D reflecting this loan agreement. In this filing, it is \par
                indicated that Mr. Mills owns 1,005,000 shares. Blake Capital Partners, \par
                LLC, a Minnesota limited liability corporation ("Blake"), owns 400,000 \par
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shares. Mr. Mills is the sole officer, director and controlling person of \par Blake. Ms. Mills, Mr. Mills' wife, owns 275,000 shares. Mr. and \par Ms. Mills each disclaim beneficial ownership over their spouse's \par shares and Ms. Mills disclaims beneficial ownership over the shares \par owned by Blake. As of this date, the Company has 7,448,015 shares \par outstanding. Accordingly, Mr. Mills owns 18.9% of the outstanding \par shares and Ms. Mills owns 3.7% of the outstanding shares.\par

\par Additionally, on November 20, 2001, the Company has participated to \par the extent of \$1 million in a private placement of securities in a company \par known as Catalytic Solutions, Inc. ("CSI"), a private company based in \par Oxnard, California. The offering was handled by JP Morgan and Hambrecht & \par Quist and consists of a preferred stock offering that is convertible into \par common stock of CSI. Exhibits C and D more fully detail the terms and \par convertibility features of this investment.\par

\par Catalytic Solutions, Inc. is a materials science technology company \par focused on applying industry-leading technology to improve the performance \par and reduce the cost of automotive catalytic converters. They have \par developed unique and proprietary Mixed Phase Catalyst ("MPC") technology \par that enables them to produce catalyst formulations that provide superior \par catalytic activity and durability at substantial cost saving versus \par competitive technologies. Using MPC technology, they can manufacture \par coated substrates, the active core of a catalytic converter, that use up to \par 10 times lower platinum group metal ("PGM") loadings than competing \par offerings, which can result in a cost savings to auto manufacturers of up \par to \$400 per vehicle. They sell their coated substrates directly to major \par auto manufacturers and to aftermarket manufacturers of catalytic \par converters. \par

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Item 7. Exhibits.\par

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Exhibit A: Non-Recourse Security and Pledge Agreement dated \par December 10, 2001.\par

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Exhibit B: Non-Recourse Secured Note dated December 10, 2001.\par

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Exhibit C: Catalytic Solutions Shareholders Agreement dated \par November 15, 2001.\par

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Exhibit D: Amended and Restated Articles of Incorporation of \par Catalytic Solutions, Inc. a California Corporation.\par

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Exhibit E: Metalclad Corporation Press Release dated December 14, \par 2001.\par

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SIGNATURES\par

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

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METALCLAD CORPORATION\par

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December 21, 2001

By: /s/Anthony C. Dabbene\par

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Anthony C. Dabbene\par

Chief Financial Officer\par

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\pard\qc EXHIBIT A\par
NON-RECOURSE SECURITY AND PLEDGE AGREEMENT\par
\pard\par
THIS SECURITY AND PLEDGE AGREEMENT is entered into as of this 10th day of \par
December, 2001, by and between BLAKE CAPITAL PARTNERS, LLC, a Minnesota \par
limited liability company ("BLAKE"), with offices at 5020 Blake Road South, \par
Edina, Minnesota 55436, WAYNE W. MILLS, an individual residing at 5020 \par
Blake Road South, Edina, Minnesota 55436 ("MILLS") (collectively referred \par
to herein as "PLEDGORS"), METALCLAD CORPORATION, a Delaware corporation \par
with offices at 2 Corporate Plaza, Suite 125, Newport Beach, California \par
92660 ("METALCLAD"), and BRUCE H. HAGLUND, ESQ., the attorney for and \par
member of the Board of Directors of METALCLAD, whose office is located at 2 \par
Park Plaza, Suite 450, Irvine, California 92614 (the "AGENT").\par
\par
\pard\qc W I T N E S S E T H:\par
\pard\par
WHEREAS, pursuant to a Non-Recourse Secured Note dated December 10, 2001, \par
METALCLAD is simultaneously herewith lending \$1,250,000.00 aggregate \par
principal amount due June 10, 2001 (the "Note") to BLAKE, a copy of which \par
Note is attached hereto as Exhibit A; and \par
\par
WHEREAS, as a condition precedent and as an inducement to METALCLAD to make \par
the loan to BLAKE evidenced by the Note, PLEDGORS have agreed to grant to \par
the AGENT for the benefit of METALCLAD a security interest in the \par
Collateral (as defined below), as more fully set forth herein; \par
\par
NOW, THEREFORE, in consideration of the foregoing and other good and \par
valuable consideration, receipt of which is hereby acknowledged, the \par
parties hereto hereby agree as follows: \par
\par
1. DEFINITIONS. For the purposes hereof unless the context otherwise \par
requires, the following terms shall have the meanings indicated: \par
\par
1.1 "Collateral" shall mean (i) the Pledged Securities, (ii) all other \par
monies, securities or other property at any time and from time to time \par
received in exchange for any of the Pledged Securities; (iii) all right, \par
title, and interest of BLAKE in and to the Pledged Securities. \par
\par
1.2 "Event of Default" shall mean the occurrence of any one of the \par
following events: \par
\par
(a) BLAKE shall fail to pay any principal and/or interest on the Note when \par
due in accordance with the terms of the Note; or\par
\par
(b) Any material representation or warranty made by BLAKE and/or MILLS, \par
respectively, as applicable and as more fully set forth in Section 5 below, \par
at any time prior to payment in full of the Note with respect to ownership \par
of the Collateral shall prove to have been incorrect in any material \par
respect on or as of the date made or deemed made; or \par
\par
(c) BLAKE and/or MILLS shall default in the observance or performance of \par
any covenant contained in this Agreement or the Note as the same may be \par
applicable to itself or himself respectively; or \par
\par
(d) PLEDGORS shall commence any case, proceeding or other action (A) under \par
any existing or future law of any jurisdiction, domestic or foreign, \par
relating to bankruptcy, insolvency, reorganization or relief of debtors, \par
seeking to have any order for relief entered with respect to it, or seeking \par

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to adjudicate it a bankrupt or insolvent, or seeking reorganization, \par arrangement, adjustment, winding-up, liquidation, dissolution, composition \par or other relief with respect to it or its debts, or (B) seeking appointment \par of a receiver, trustee, custodian, conservator or other similar official \par for it or for all or any substantial part of its assets, or PLEDGORS shall \par make a general assignment for the benefit of its creditors; or \par \par

(e) There shall be commenced against PLEDGORS any case, proceeding or other \par action of a nature referred to in clause (d) above which (A) results in the \par entry of an order for relief or any such adjudication or appointment or (B) \par remains undismissed, undischarged or unbonded for a period of 30 days; or \par \par

(f) There shall be commenced against PLEDGORS any case, proceeding or other \par action seeking issuance of a warrant of attachment, execution, distraint or \par similar process against the Collateral which results in the entry of an \par order for any such relief which shall not have been vacated, discharged, or \par stayed or bonded pending appeal within 30 days from the entry thereof; or \par \par

(g) PLEDGORS shall take any action in furtherance of, or indicating its \par consent to, approval of, or acquiescence in, any of the acts set forth in \par clause (d), (e), or (f) above; or \par \par

(h) PLEDGORS shall generally not, or shall be unable to, or shall admit in \par writing its inability to, pay its debts as they become due. \par \par

1.3 "Obligations" shall mean the obligations of BLAKE and/or MILLS under \par the Note and this Agreement that are specifically applicable to it or him, \par respectively. \par \par

1.4 "Pledged Securities" shall mean 500,000 shares of the common stock of \par METALCLAD owned beneficially and of record by PLEDGORS as evidenced by \par certificates numbered 815, 817, and 818 (the "Certificates"), copies of \par which are attached hereto as Exhibit B. \par \par

2. PLEDGE. As security for the payment and performance in full of all of \par the Obligations, PLEDGORS hereby grant and pledge to the AGENT, for the \par benefit of METALCLAD, and hereby grant to the AGENT, a security interest in \par the Collateral to the extent of their respective interests in the \par Collateral. \par \par

3. DELIVERY OF COLLATERAL TO THE AGENT. The AGENT hereby acknowledges the \par delivery of the Certificates to him, accompanied by stock powers or \par instruments of transfer with medallion signature guarantees, as the case \par may be, duly executed in blank by PLEDGORS (the "Stock Powers"). \par \par

4. CHANGE OF DENOMINATION. The AGENT shall have the right (in his sole and \par absolute discretion) upon the occurrence and during the continuation of an \par Event of Default, following the expiration of the applicable extension or \par Cure Period as defined in Section 7.1 or 7.3 hereof, respectively, to \par exchange the Certificates or other instruments or documents representing \par the Collateral for certificates of smaller or larger denominations for any \par purpose consistent with this Agreement and in accordance with the Uniform \par Commercial Code. \par \par

5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BLAKE. BLAKE and/or MILLS \par hereby represent and warrant to, and/or covenant and agree with, METALCLAD \par and the AGENT as follows: \par \par

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5.1 BLAKE and/or MILLS are respectively the record and beneficial owners of \par the Pledged Securities and have the absolute right to pledge to the AGENT \par and to grant to METALCLAD a security interest in the Collateral. \par \par

5.2 To the best of PLEDGORS' knowledge, the execution, delivery and \par performance of this Agreement and the Note, the pledge to the AGENT, and \par the grant to METALCLAD of a security interest in the Collateral (i) will \par not violate, or involve the AGENT or METALCLAD in a violation of, any \par provision of any law or regulation or any order of any governmental \par authority or any judgment of any court applicable to BLAKE or his \par properties and assets, (ii) will not violate any agreement for borrowed \par money, any bond, note or other similar instrument or any other material \par agreement to which PLEDGORS are a party or by which PLEDGORS or any of \par their property is bound or affected, (iii) will not be in conflict with, \par result in a breach of or constitute (with due notice or lapse of time or \par both) a default under any indenture, agreement for borrowed money, bond, \par note, instrument or other agreement, and (iv) will not result in the \par creation, or imposition of any lien, charge or encumbrance of any nature \par whatsoever upon any property or assets of PLEDGORS other than pursuant to \par this Agreement. \par

\par

5.3 This Agreement constitutes the legal, valid and binding obligation of \par BLAKE and/or MILLS with respect to their respective securities pledged \par hereunder, and is enforceable in accordance with its terms, subject (i) to \par the enforcement of remedies, to applicable bankruptcy, reorganization, \par insolvency and other laws affecting creditors rights generally and to \par moratorium laws from time to time in effect, and (ii) to general equitable \par principles. \par

\par

5.4 BLAKE and/or MILLS have good title to their respective securities \par pledged hereunder. \par

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5.5 The Collateral is not subject to any other financial liens, security \par interests or encumbrances. \par

\par

5.6 There is no material pending legal or governmental proceeding to which \par PLEDGORS are a party or to which any of their properties is subject, which \par proceeding will materially affect (i) PLEDGORS ability to perform their \par obligations hereunder, or (ii) the Collateral. \par

\par

5.7 This Agreement creates in favor of METALCLAD a valid, binding and \par enforceable security interest in, and lien upon, all right, title and \par interest of BLAKE and/or MILLS, respectively, in the Collateral and, upon \par delivery of the Collateral to the AGENT, METALCLAD will have a fully \par perfected first and prior security interest in and lien upon all right, \par title and interest of BLAKE and MILLS in the Collateral. \par

\par

5.8 BLAKE will not create or permit to exist any financial lien, security \par interest or encumbrance on the Collateral except as permitted by this \par Agreement. \par

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6. VOTING RIGHTS; DIVIDENDS; ETC. \par

\par

6.1 PLEDGORS shall be entitled to exercise any and all voting and/or \par consensual rights and powers accruing to owners of the Pledged Securities \par or any part thereof for any purpose not inconsistent with the terms hereof, \par at all times, except, provided, however, such rights shall cease with \par respect to any Pledged Securities which are cancelled as expressly provided \par in Section 7 below. \par

\par

6.2 Any dividends or distributions of any kind whatsoever (in cash or \par

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otherwise) received by PLEDGORS, including any dividends resulting from a subdivision, combination, or reclassification of the outstanding capital stock of the issuer, which are received in exchange for the Pledged Securities, or other Collateral or any part thereof or as a result of any merger, consolidation, acquisition, or other exchange of assets to which METALCLAD may be a party, or otherwise, shall be and become part of the Collateral pledged hereunder.

7. MATURITY DATE; EXTENSION PERIOD; CURE PERIOD; LIMITED RECOURSE UPON DEFAULT.

7.1 At the Maturity of the Note (as defined therein), BLAKE shall have the option of (i) paying the Obligations in cash; (ii) paying the principal portion of the Obligations by requesting cancellation of all or part of the Pledged Securities as provided in the Note; (iii) paying the Obligations in part in cash, and in part by requesting cancellation of the Pledged Securities as provided in the Note for the principal portion of the Obligations; or (iv) giving METALCLAD notice that BLAKE is extending the Maturity Date by 90 days (until September 8, 2002) (the "Extended Maturity Date"), during which period simple interest shall accrue on the principal obligation at the rate of 12% per annum.

7.2 If, following the end of the Extended Maturity Date effected by BLAKE pursuant to Subsection 7.1 above, an Event of Default shall have occurred and be continuing, the AGENT, upon complying with Section 8 below, shall have the right to deliver that number of Pledged Securities to METALCLAD's stock transfer agent for cancellation as is necessary to pay the principal balance then due under the Note. The number of shares of the Pledged Securities subject to cancellation (those necessary to pay the principal balance remaining under the Note) shall be derived by dividing the amount of the principal balance due under the Note by \$2.50 per share. If after payment and/or cancellation of Pledged Securities to satisfy the principal portion of the Obligations, Pledged Securities remain in escrow with the AGENT, the remaining Pledged Securities may be used to satisfy the interest portion of the Obligations at the rate of \$2.50 per share. All Pledged Securities remaining, if any, after satisfying the principal and interest portions of the Obligations under the Note shall immediately be returned by the AGENT and/or METALCLAD to BLAKE.

7.3 In the Event of Default, METALCLAD shall provide PLEDGORS Notice of the Event of Default pursuant to paragraph 12 hereof and of its intention, if any, to seek its remedies pursuant to paragraph 8 hereof. Upon receipt of Notice of an Event of Default, Pledgors shall have 90 days within which to cure said default (the "Cure Period"), provided, however, that in no event shall such Cure Period extend beyond the last date of the Extended Maturity Date.

7.4 With respect to the principal owing under the Note, the sole and exclusive remedy for any Event of Default shall be to foreclose on the Collateral as provided in this Agreement. Neither BLAKE nor MILLS shall be personally obligated to repay any of such principal. However, BLAKE remains personally obligated to pay any interest owing under the Note to the extent the obligation to pay such interest has not been satisfied by the cancellation of Pledged Securities pursuant to the terms of this Agreement or the application of the proceeds of the sale of such Pledged Securities to the Obligations. Such obligation of BLAKE to pay interest owing under the Note shall be guaranteed by MILLS.

8. CANCELLATION NOTICE. The AGENT shall give 10 calendar days written notice (the "Cancellation Notice") to BLAKE and MILLS of the AGENT's

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intention to deliver any or all of the Pledged Securities to METALCLAD's stock transfer agent for cancellation. The Cancellation Notice shall set forth the number of shares of the Pledged Securities subject to cancellation, the number of Pledged Securities that shall be returned to BLAKE and/or MILLS pursuant to Section 7.2 above, the date on which the Pledged Securities will be sent to METALCLAD's stock transfer agent, and the calculation described in Section 7.2 above.

9. THE AGENT APPOINTED ATTORNEY-IN-FACT. Upon the occurrence and during the continuance of an Event of Default, and following any applicable cure period, PLEDGORS hereby appoint the AGENT as their attorney-in-fact for the purpose of carrying out the provisions of this Agreement and the pledge of, and the grant of a security interest in, the Collateral hereunder and the taking of any action and the execution of any instrument which the AGENT may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, the AGENT shall have the right and power to deliver shares of the Pledged Securities to METALCLAD's stock transfer agent and complete the Stock Power by inserting the date on which the Pledged Securities are being cancelled in accordance with the terms of this Agreement.

10. FURTHER ASSURANCES. Upon the request of the AGENT, PLEDGORS hereby agrees duly to execute and deliver, or cause to be duly executed and received, from time to time, at no cost or expense of PLEDGORS, such further instruments as may be necessary or proper, in the reasonable judgment of the AGENT, to carry out the provisions and purposes of this Agreement and to do all things necessary or advisable, in the judgment of the AGENT, to perfect and preserve the pledge and the security interests of the AGENT hereunder and in the Collateral or any portion thereof.

11. RELEASE OF COLLATERAL.

11.1 The pledge and grant of the security interest in all of the Collateral hereunder shall terminate upon payment in full of the principal balance of the Note together with any interest owing thereon. AGENT hereby acknowledges that his authority is limited to disposition and cancellation of the Collateral only to the extent of the Obligations.

11.2 At such time as the pledge and security interest hereunder shall terminate, the AGENT shall, if requested by BLAKE or MILLS, execute such documents as BLAKE or MILLS may reasonably request, and assign and deliver to BLAKE or MILLS, or to such person or persons as BLAKE or MILLS shall designate, such of the Collateral (if any) as shall not have been cancelled pursuant to the terms hereof, together with appropriate instruments of reassignment and release and share certificates representing the Collateral and any Stock Powers then remaining in the possession or under the control of the AGENT. Any such reassignment shall be without recourse upon or warranty by the AGENT (other than as to such Collateral being free of any lien or encumbrance created by the AGENT).

12. NOTICES. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or shall be sent by facsimile (and if sent by facsimile, shall be confirmed by registered mail, return receipt requested, or by overnight mail or courier, postage and delivery charges prepaid), to the addresses set forth in the introductory paragraph to this Agreement. Whenever any notice is required to be given hereunder, such notice shall be deemed given and such requirement satisfied only when

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such notice is delivered or, if sent by telecopy, when received. Addresses \par may be changed upon notice of such change given as provided in this Section \par 12. \par

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13. SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All covenants, agreements, \par representations and warranties made herein and in any certificates \par delivered pursuant hereto shall survive the loan by METALCLAD, and the \par execution and delivery, of the Note pursuant to the Loan Agreement, and \par shall continue in full force and effect until the payment in full of the \par Obligations or the, conversion, redemption or prepayment of all of the \par Note, regardless of the release of part or all of the Collateral pursuant \par to the provisions of Section 11 hereof. \par

\par

\par

14. SUCCESSORS. Whenever in this Agreement any of the parties hereto is \par referred to such reference shall be deemed to include the successors and \par assigns of such party, and all covenants, promises and agreements by or on \par behalf of the parties which are contained in this Agreement shall bind and \par inure to the benefit of the successors and assigns of all other parties. \par

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\par

15. THE AGENT'S FEES. METALCLAD agrees to pay to the fees to the AGENT in \par connection with this Agreement and the Note. \par

\par

\par

16. INDEMNIFICATION BY METALCLAD. METALCLAD hereby indemnifies and holds \par harmless the AGENT from and against all claims, demands, losses, judgments, \par liabilities, penalties and expenses (including, without limitation, \par reasonable attorneys' fees and disbursements) of any nature whatsoever, \par arising out of or related to this Agreement. This indemnity shall survive \par the termination of this Agreement. \par

\par

\par

17. GOVERNING LAW. This Agreement shall be governed by, and construed in \par accordance with, the laws of the State of Delaware. \par

\par

\par

18. FAILURE TO ACT NOT A WAIVER. Neither any failure to exercise, nor any \par delay on the part of the AGENT, BLAKE or MILLS in exercising, any right, \par power or privilege hereunder shall operate as a waiver thereof, nor shall a \par single or partial exercise thereof preclude any other or further exercise \par of any right, power or privilege. \par

\par

\par

19. MODIFICATION. No modification, amendment or waiver of any provision of \par this Agreement, and no consent to any departure from the terms hereof, \par shall in any event be effective unless the same shall be in writing and \par signed by the parties hereto, and then such waiver or consent shall be \par effective only in the specific instance and for the purpose for which \par given. \par

\par

\par

20. SEVERABILITY. In case any one or more of the provisions contained in \par this Agreement should be invalid, illegal or unenforceable in any respect, \par the validity, legality and enforceability of the remaining provisions \par contained herein shall not in any way be affected or impaired thereby. To \par the extent permitted by applicable law, the parties hereby waive any \par provision of law that may render any provision hereof invalid, illegal or \par unenforceable in any respect. \par

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21. COUNTERPARTS. This Agreement may be executed by the parties hereto in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument, and all signatures need not appear on any one counterpart.

\par
\par

22. HEADINGS. The headings and captions of this Agreement are for convenience of reference only and shall not define, limit or otherwise affect any of the terms or provisions hereof.

\par
\par

23. ARBITRATION. Any dispute relating to this Agreement shall be resolved by final and binding arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association (the "AAA"). A copy of any demand for arbitration shall be filed with the Los Angeles, California office of the AAA; and such arbitration shall be conducted in Orange County, California, unless all parties expressly agree in writing otherwise. Any award or decision issued by the arbitrator shall be a final and binding determination of the dispute without appeal or review except as permitted by the laws of the State of California. In addition to any damages awarded in any such arbitration, the prevailing party therein shall be entitled to receive its reasonable attorneys' fees and costs incurred in prosecuting such arbitration and enforcing any judgment thereon.

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\par

24. WAIVER OF POTENTIAL CONFLICT OF INTEREST. The parties hereto acknowledge that the AGENT is general counsel to METALCLAD. The parties agree to waive any potential conflict of interest that may exist as a result of such representation and acknowledge that they have consulted with independent counsel with respect to such potential conflict of interest or have waived such right. In the event of a dispute between PLEDGORS and METALCLAD in connection with this Agreement, the AGENT agrees that neither he nor any member of his firm will act as counsel to METALCLAD in connection with the resolution of such dispute.

IN WITNESS WHEREOF, BLAKE, MILLS, METALCLAD, and the AGENT have caused this Pledge Agreement to be executed by their respective duly authorized officers, all as of day and year first above written.

\par

BLAKE:
\par
BLAKE CAPITAL PARTNERS, LLC

MILLS:
\par
WAYNE W. MILLS

\par
/s/ Wayne W. Mills

\par
/s/ Wayne W. Mills

WAYNE W. MILLS, Individually

WAYNE W. MILLS, Manager
\par
\par

METALCLAD:
METALCLAD CORPORATION

\par
By: /s/ Grant S. Kesler

Grant S. Kesler, President
\par
\par

AGENT:
\par
/s/ Bruce H. Haglund

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BRUCE H. HAGLUND\par

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\pard\qc EXHIBIT B\par

\par

NON-RECOURSE SECURED NOTE\par

\pard\par

\par

\$1,250,000.00 December 10, 2001\par

\par

FOR VALUE RECEIVED, the undersigned, BLAKE CAPITAL PARTNERS, LLC, a \par
Minnesota limited liability company ("BLAKE"), hereby promises to pay to \par
METALCLAD CORPORATION, a Delaware corporation located at 2 Corporate Plaza, \par
Suite 125, Newport Beach, California 92660 or its registered assigns \par
("METALCLAD"), the principal sum of \$1,250,000.00 on June 10, 2002 \par
("Maturity") with simple interest at the rate of 6% per annum, principal \par
and interest payable on Maturity. Wayne W. Mills ("MILLS"), an individual \par
residing at the 5020 Blake Road South, Edina, Minnesota, is a party hereto \par
solely for the purpose of guaranteeing payment by BLAKE of any interest \par
obligations due hereunder. \par

\par

BLAKE shall have the right to extend the Maturity date of this Note for a \par
period of 90 days pursuant to Section 7 of the Non-Recourse Security and \par
Pledge Agreement dated December 10, 2001, a copy of which is attached \par
hereto and incorporated herein by this reference as Exhibit "A" (the \par
"Security Agreement"). In the event BLAKE elects to extend the Maturity \par
date, during the pendency of the 90-day extension period, simple interest \par
shall be payable at 12% per annum. \par

\par

The principal amount hereof, together with accrued, unpaid interest hereon, \par
may be prepaid at anytime without penalty. In this regard BLAKE may direct \par
Bruce H. Haglund, as agent in accordance with terms of the Security \par
Agreement (the "Agent"), to sell all or any part of the Pledged Securities \par
(hereinafter defined) held in escrow and to use the proceeds therefrom to \par
reduce the principal balance of this Note or have the same held in escrow \par
pending further instructions from BLAKE. BLAKE may also instruct METALCLAD \par
through the Agent, to cancel any of the shares held in escrow at \$2.50 per \par
share, or at a higher price at METALCLAD's discretion, and to have that \par
amount applied to the then remaining principal balance of the Note. \par
METALCLAD and the Agent shall immediately perform any of the foregoing \par
requests. The principal balance then due and owing under this Note shall \par
thereupon be reduced by an amount equal to the number of Pledged Securities \par
cancelled multiplied by \$2.50 per share, or by such higher price, as \par
applicable. If, after applying this amount to the principal balance of the \par
Note and in the event the Note has otherwise been paid in full, there \par
remain any uncanceled Pledged Securities, the same shall be returned to \par
BLAKE or MILLS as required by the Security Agreement. \par

\par

Payment of principal and interest shall be made in lawful money of the \par
United States of America or pursuant to cancellation of the Pledged \par
Securities as provided for herein, at the principal office of METALCLAD at \par
Newport Beach, California, or at such other place as METALCLAD shall have \par
designated for such purpose in writing, or to the address or account \par
designated by METALCLAD for such purpose. \par

\par

The sole security for this Note is 500,000 shares of common stock of \par
METALCLAD pledged by BLAKE and MILLS as set forth in the Security Agreement \par
(the "Pledged Securities"). BLAKE shall have the right at any time to \par
request the Agent to sell any or all of the Pledged Securities, in the open \par
market or by private transaction, and to apply the proceeds of such sale, \par

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less brokerage commissions and fees incurred in such sale ("Selling Expenses"), to pay all or any portion of any amount due hereunder, and said Agent shall immediately perform such request; provided, however, that none of the Pledged Securities shall be sold for a price of less than \$2.50 per share net of Selling Expenses.

This Note is delivered in and shall be construed and enforced in accordance with and governed by the laws of the State of California. If any term, provision, covenant, or condition of this Note is held to be invalid, void, or unenforceable, the rest of the Note shall remain in full force and effect and shall in no way be affected, impaired, or invalidated. BLAKE hereby waives presentment, demand, dishonor or notice of dishonor, protest or notice of protest, or other formality at maturity, at which time this Note will be unconditionally due and payable in the manner and with the effect provided in the Security Agreement and this Note. METALCLAD shall be entitled to collect reasonable attorneys' fee from BLAKE, as well as other costs and expenses reasonably incurred, in connection with any dispute related to the payment due on this Note.

This is a non-recourse note and the recourse of METALCLAD, with respect to the principal amount owing under this Note, shall be limited to the Collateral as provided in the Security Agreement. Neither BLAKE, nor MILLS, shall be personally obligated to pay the principal amount owing under this Note. However, BLAKE and MILLS shall be personally obligated to pay any interest owing under the Note to the extent the obligation to pay such interest has not been satisfied by the cancellation of Pledged Securities pursuant to the terms of this Note or the Security Agreement or by the application of the proceeds of the sale of such Pledged Securities to BLAKE's obligations hereunder.

IN WITNESS WHEREOF, BLAKE has executed and delivered this Note to METALCLAD on December 10, 2001.

BLAKE:

BLAKE CAPITAL PARTNERS, LLC

/s/ Wayne W. Mills

WAYNE W. MILLS, Manager

MILLS:
Wayne W. Mills

/s/ Wayne W. Mills

Individually

EXHIBIT C

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\par
SHAREHOLDERS' AGREEMENT\par
\par
\par
dated as of November 15, 2001\par
\par
\par
\par
among\par
\par
\par
CATALYTIC SOLUTIONS, INC. \par
\par
\par
and\par
\par
\par
THE SHAREHOLDERS NAMED HEREIN\par
\par
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\par
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\par
Morgan, Lewis & Bockius LLP\par
New York, New York\par
\pard\par
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\pard\qc TABLE OF CONTENTS\par
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	PAGE\par
ARTICLE I CERTAIN DEFINITIONS	1\par
1.1 Defined Terms	1\par
\par	
ARTICLE II TRANSFERS OF RESTRICTED SECURITIES	4\par
2.1 Restrictions Generally; Securities Act	4\par
2.2 Legends	5\par
2.3 Transfers by Management Group Members	6\par
2.4 Management Group First Refusal Rights	6\par
2.4 Series C First Refusal Rights	7\par
\par	
ARTICLE III TAG-ALONG RIGHTS; PREEMPTIVE RIGHTS	9\par
3.1 Tag-Along Rights	9\par
3.2 Pre-Emptive Right	10\par
\par	
ARTICLE IV MISCELLANEOUS	12\par
4.1 Election of Directors	12\par
4.2 Series C Protective Provisions\par	13\par
4.3 Governing Law	14\par
4.4 Waiver of Jury Trial	14\par
4.5 Entire Agreement; Amendments	15\par
4.6 Term	15\par
4.7 Inspection	15\par
4.8 Recapitalization, Exchanges, Etc., Affecting \par Restricted Securities	15\par
4.9 Compliance with Regulations	15\par
4.10 Waiver	15\par
4.11 Successors and Assigns	15\par

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4.12 Remedies	15\par
4.13 Invalid Provisions	16\par
4.14 Headings	16\par
4.15 Further Assurances	16\par
4.16 Gender	16\par
4.17 Counterparts	16\par
4.18 Notices	16\par
4.19 Joinder Agreement	17\par
4.20 Investors Rights Agreement	17\par

\par

\par

SHAREHOLDERS' AGREEMENT, dated as of November 15, 2001 (the "Effective \par Date"), by and among Catalytic Solutions, Inc., a California corporation \par (the "Company"), Stephen J. Golden ("Golden"), William R. Anderson \par ("Anderson"), Daniel P. McGuire ("McGuire") and the holders of the \par Company's Series C Preferred Stock (the "Series C Shareholders").\par

RECITALS\par

\par

WHEREAS, each of the Management Group Members, as defined below, Series C \par Shareholders and the Company desires to enter into this Agreement to \par regulate certain aspects of their relationship and to provide for, among \par other things, restrictions on the transfer or other disposition of \par securities of the Company and matters relating to the corporate governance \par of the Company.\par

\par

NOW, THEREFORE, for good and valuable consideration, the receipt and \par sufficiency of which are hereby acknowledged, the parties hereto agree as \par follows:\par

\par

\pard\qc ARTICLE I\par

CERTAIN DEFINITIONS\par

\pard\par

1.1\tab Defined Terms.\par

\par

(a) The following capitalized terms, when used in this Agreement, \par have the respective meanings set forth below:\par

\par

"Affiliate" means, as applied to any Person, (a) any other \par Person directly or indirectly controlling, controlled by or under common \par control with, that Person, (b) any other Person that owns or controls (i) \par 10% or more of any class of equity securities of that Person or any of its \par Affiliates or (ii) 10% or more of any class of equity securities (including \par any equity securities issuable upon the exercise of any option or \par convertible security) of that Person or any of its Affiliates, or (c) any \par director, partner, officer, manager, agent, employee or relative of such \par Person. For the purposes of this definition, "control" (including with \par correlative meanings, the terms "controlling", "controlled by", and "under \par common control with"), as applied to any Person, means the possession, \par directly or indirectly, of the power to direct or cause the direction of \par the management and policies of that Person, whether through ownership of \par voting securities or by contract or otherwise.\par

\par

"Agreement" means this Shareholders' Agreement and the exhibits \par hereto, as the same may be amended, modified, supplemented or restated from \par time to time in accordance with the terms hereof.\par

\par

"Associate" means, with respect to any Person, (i) any \par corporation or organization of which such Person is an officer or partner \par or is, directly or indirectly, the beneficial owner of 10 percent or more \par of any class of equity securities, (ii) any trust or other estate in which \par such Person has a substantial beneficial interest or as to which such \par Person serves as trustee or in a similar fiduciary capacity and (iii) any \par

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relative or spouse of such Person, or any relative of such spouse, who has \par
the same home as such Person or who is a director or officer of such Person \par
or any of its parents or subsidiaries.\par

\par

"Board" means the Board of Directors of the Company.\par

\par

"Commission" means the Securities and Exchange Commission.\par

\par

"Common Stock" means the Company's common stock, no par value \par
per share, and any stock and other securities into which such Common Stock \par
may thereafter be changed or exchanged.\par

\par

"Diluted Basis" means, with respect to the calculation of the \par
number of shares of Common Stock, all shares of Common Stock outstanding at \par
the time of determination and all shares issuable upon the exercise of \par
outstanding Options, outstanding Warrants or other convertible or \par
exchangeable securities; provided, however, that with respect to any \par
Options, shares of Common Stock shall only be included in the determination \par
of Diluted Basis to the extent such Options are vested.\par

\par

"Exchange Act" means the Securities Exchange Act of 1934, as \par
amended, and the rules and regulations of the Commission thereunder.\par

\par

"Joinder Agreement" means a Joinder Agreement substantially in \par
the form attached hereto as Attachment 1.\par

\par

"Lien" means any lien, claim, option, charge, encumbrance, \par
security interest or other adverse claim of any kind.\par

\par

"Management Group Members" means Golden, Anderson and McGuire \par
and their respective Permitted Transferees, so long as any such Person \par
shall hold Restricted Securities.\par

\par

"Options" means options to purchase shares of Common Stock \par
issued pursuant to the Company's stock option plan or otherwise granted by \par
the Company (subject in each case to appropriate adjustment for stock \par
splits, stock dividends, recapitalizations and similar events).\par

\par

"Permitted Transferee" means:\par

\par

(i) as to any Management Group Member, the child, stepchild, \par
grandchild, parent, step-parent, grandparent, spouse, sibling, mother-in-\par
law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-\par
in-law (including by adoption) of such Management Group Member, or any \par
trust of which such Management Group Member is the trustee and which is \par
established solely for the benefit of any of the foregoing individuals and \par
whose terms are not inconsistent with the terms of this Agreement or any \par
partnership, the general partner(s) and limited partner(s) (if any) of \par
which are one or more Persons identified in this clause (i) or any \par
charitable foundation;\par

\par

(ii) as to any Management Group Member, any other Management \par
Group Member; any trust, a majority in interest of the beneficiaries of \par
which, or corporation or partnership or limited liability company, a \par
majority in interest of the shareholders, limited partners or members of \par
which, or partnership, the managing general partner of which, are (or is) \par
one (1) or more of the Persons identified in this clause (ii), the spouse \par
of any such Person and/or such Person's lineal descendants (including by \par
adoption); and\par

\par

(iii) as to any Person that becomes a Management Group Member \par
and that is not a natural Person, any Affiliate of such Management Group \par

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Member.\par
\par

"Person" means an individual, partnership, corporation, limited liability company or partnership, trust, unincorporated organization, joint venture, government (or agency or political subdivision thereof) or any other entity of any kind.\par
\par

"Preferred Stock" means the Company's outstanding Preferred Stock as such class of security exists on the Effective Date and any other stock and securities into which such Preferred Stock may thereafter be changed or exchanged. As of the Effective Date, the Preferred Stock includes the Series A Preferred, the Series B Preferred and the Series C Preferred.\par
\par

"Pro Rata" means, with respect to one or more Series C Shareholders, in proportion to the number of shares of Common Stock on a Diluted Basis owned by such Series C Shareholder or Shareholders.\par
\par

"Qualified Public Offering" means an underwritten public offering of the shares of Common Stock with an aggregate offering size of \$25 million at a public offering price per share that is not less than \$44.375.\par
\par

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date hereof, by and among the signatories thereto, as the same may be amended, modified or supplemented from time to time.\par
\par

"Restricted Securities" means the Common Stock, the Series A Preferred, the Series B Preferred, Series C Preferred, the Options, the Warrants and any other securities exercisable, exchangeable or convertible for or into Common Stock and any securities issued with respect to any of the foregoing as a result of any stock dividend, stock split, reclassification, recapitalization, reorganization, merger, consolidation or similar event or upon the conversion, exchange or exercise thereof.\par
\par

"Sale of the Company" means the sale of the Company (whether by merger, consolidation, recapitalization, reorganization, sale of securities, sale of assets or otherwise) in one transaction or series of related transactions to a Person or Persons not an Affiliate, directly or indirectly, of any Management Group Member pursuant to which such Person or Persons (together with its Affiliates) acquires (i) securities representing at least a majority of the voting power of all securities of the Company, assuming the conversion, exchange or exercise of all securities convertible, exchangeable or exercisable for or into voting securities, or (ii) all or substantially all of the Company's assets on a consolidated basis.\par
\par

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.\par
\par

"Series A Preferred" means the Series A Preferred Stock, no value per share, of the Company.\par
\par

"Series B Preferred" means the Series B Preferred Stock, no value per share, of the Company.\par
\par

"Series C Preferred" means the Series C Preferred Stock, no value per share, of the Company.\par
\par

"Shareholder" means each of the Series C Shareholders and the Management Group Members for so long as any such Person shall hold

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Restricted Securities.\par

\par

"Transfer" means, directly or indirectly, any sale, transfer, \par assignment, hypothecation, pledge or other disposition of any Restricted \par Securities or any interest therein.\par

\par

"Warrants" means warrants to purchase up to 18,055 shares of \par Common Stock issued by the Company and warrants to purchase 70,143 shares \par of Series C Preferred issuable upon the consummation of the transactions \par contemplated by that Investment Agreement dated the date hereof between the \par Company and the Investors named therein (the "Investment Agreement"). \par

\par

(b) Unless otherwise provided herein, all accounting terms used in \par this Agreement shall be interpreted in accordance with United States of \par America generally accepted accounting principles as in effect from time to \par time, applied on a consistent basis.\par

\par

\pard\qc ARTICLE II\par

TRANSFERS OF RESTRICTED SECURITIES\par

\pard\par

2.1 Restrictions Generally; Securities Act. Each of the Series C \par Shareholders and each Management Group Member agrees that, in addition to \par the other requirements imposed herein relating to transfer, it will not \par transfer any Restricted Securities except pursuant to (i) an effective \par registration statement under the Securities Act; (ii) an exemption from the \par registration requirements of the Securities Act and, if required by the \par Company, receipt by the Company of an opinion of counsel to the Company; or \par (iii) a no-action letter from the Commission addressed to the Company, to \par the effect that no registration under the Securities Act is required \par because of the availability of an exemption from registration under the \par Securities Act. \par

\par

2.2 Legends. (a) Each certificate representing Restricted \par Securities shall be endorsed with the following legend and such other \par legends as may be required by applicable state securities laws:\par

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT \par TO A STOCKHOLDERS' AGREEMENT, DATED AS OF NOVEMBER 15, 2001, \par AS SUCH AGREEMENT MAY BE AMENDED, RESTATED OR MODIFIED FROM \par TIME TO TIME, AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, \par PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF EXCEPT IN \par ACCORDANCE WITH THE PROVISIONS THEREOF, AND ANY TRANSFEREE OF \par THESE SECURITIES SHALL BE SUBJECT TO THE TERMS OF SUCH \par AGREEMENT. COPIES OF THE FOREGOING AGREEMENT ARE MAINTAINED \par WITH THE CORPORATE RECORDS OF THE ISSUER AND ARE AVAILABLE \par FOR INSPECTION AT THE PRINCIPAL OFFICES OF THE ISSUER."\par

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN \par REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR \par ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD OR \par TRANSFERRED EXCEPT PURSUANT TO (I) AN EFFECTIVE REGISTRATION \par STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND \par IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR (II) \par AN APPLICABLE EXEMPTION FROM REGISTRATION THEREUNDER AND \par UNDER APPLICABLE STATE SECURITIES LAWS."\par

\par

(b) Any certificate issued at any time in exchange or substitution \par for any certificate bearing such legends (except a new certificate issued \par upon the completion of a Transfer pursuant to a registered public offering \par under the Securities Act and made in accordance with the Securities Act) \par shall also bear such legends, unless in the opinion of counsel for the \par Company, the Restricted Securities represented thereby are no longer \par subject to the provisions of this Agreement or the restrictions imposed \par under the Securities Act or state securities laws, in which case the \par

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applicable legend (or legends) may be removed. \par

\par

2.3 Transfers by Management Group Members. Each Management Group \par Member severally agrees that it will not transfer any Restricted \par Securities, except (i) to a Permitted Transferee or (ii) pursuant to the \par terms relating to transfer as set forth in this Agreement. \par \par

2.4 Management Group First Refusal Rights. \par

\par

(a) Except for Transfers \par permitted pursuant to Section 2.3, if any Management Group Member (the \par "Selling Management Group Member") proposes to transfer any Restricted \par Securities of the Company (the "Offered Securities"), prior to any Transfer \par such Management Group Member shall obtain a bona fide arm's-length written \par offer (a "Bona Fide Offer") from an independent party unrelated to such \par Management Group Member (the "Third Party") for the purchase of such \par Offered Securities and shall give written notice of the proposed Transfer \par (the "Notice of Intention") to the Company and to each of the Series C \par Shareholders (the "Prospective Buyers"), accompanied by a copy of the Bona \par Fide Offer and evidence demonstrating to the reasonable satisfaction of the \par Company the Third Party's ability to consummate the purchase of the Offered \par Securities in accordance with the terms of the Bona Fide Offer. The Bona \par Fide Offer shall identify such Third Party, the price per share (which \par shall be in cash or notes) being offered by the Third Party for the Offered \par Securities (the "Offer Price") and all other material terms of the Bona \par Fide Offer.\par \par

(b) For a period of thirty (30) days following its receipt of the \par Notice of Intention, the Company shall have an irrevocable right to \par purchase all or any portion of the Offered Securities at the Offer Price, \par exercisable by delivery of notice (the "Company Notice") to the Selling \par Management Group Member, with a copy to each of the Prospective Buyers, \par specifying the number of Offered Securities with respect to which the \par Company is exercising its option. \par \par

(c) For a period of thirty (30) days following its receipt of the \par Company Notice or, if no Company Notice is so received, for a period of \par sixty (60) days following its receipt of the Notice of Intention, each of \par the Prospective Buyers shall have the irrevocable right to purchase, upon \par such terms and conditions as may be individually negotiated with the Third \par Party, any or all of the Offered Securities which the Company has elected \par not to purchase, Pro Rata among the Prospective Buyers; provided, however, \par that in the event any Prospective Buyer does not purchase any or all of its \par Pro Rata portion of the Offered Securities, the other Prospective Buyers \par shall have the right to purchase such portion, Pro Rata, until all of such \par Offered Securities are purchased or until such other Prospective Buyers do \par not desire to purchase any more Offered Securities. The right of the \par Prospective Buyers pursuant to this Section 2.4(c) shall be exercisable by \par delivery of a notice (the "Prospective Buyer Notice") setting forth the \par maximum number of Offered Securities that such Prospective Buyer wishes to \par purchase, including any number which would be allocated to such Prospective \par Buyer in the event any other Prospective Buyer does not purchase all or any \par portion of its Pro Rata portion, to the Selling Management Group Member and \par the Company and shall expire if unexercised within such 30-day or 60-day \par period, as applicable. \par \par

(d) Notwithstanding the foregoing provisions of this Section 2.4, \par unless the Selling Management Group Member shall have consented to the \par purchase of less than all of the Offered Securities, neither the Company \par nor any Prospective Buyer may purchase any Offered Securities unless all of \par the Offered Securities are to be purchased (whether by the Company or the \par Prospective Buyers, or any combination thereof).\par

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\par

(e) If all notices required to be given pursuant to this Section 2.4 \par have been duly given, and the Company and the Prospective Buyers determine \par not to exercise their respective options to purchase the Offered Securities \par or determine, with the consent of the Selling Management Group Member, to \par exercise their options to purchase less than all of the Offered Securities, \par then the Selling Management Group Member shall have the right, for a period \par of sixty (60) days from the earlier of (i) the expiration of the last \par applicable option period pursuant to this Section 2.4 or (ii) the date on \par which such Selling Management Group Member receives notice from the Company \par and the Prospective Buyers that they will not exercise in whole or in part \par the options granted pursuant to this Section 2.4, to sell to the Third \par Party the Offered Securities remaining unsold under this Section 2.4 at a \par price not less than the Offer Price and on terms no more favorable to the \par Third Party than the other terms set forth in the Bona Fide Offer; \par provided, that prior to any such Transfer to the Third Party, the Third \par Party executes and delivers to the Company, for the benefit of the Company, \par the Management Group Members and all Series C Shareholders, a Joinder \par Agreement and thereby becomes a party to this Agreement.\par

\par

(f) The closing of any purchase and sale pursuant to this Section 2.4 \par (other than to the Third Party) shall take place on such date, not later \par than fifteen (15) business days after the later of delivery to the Selling \par Management Group Member of (i) the Company Notice and (ii) the Prospective \par Buyer Notice, as the Company and the Selling Management Group Member shall \par select. At the closing of such purchase and sale, the Selling Management \par Group Member shall deliver certificates evidencing the Offered Securities \par being sold duly endorsed, or accompanied by written instruments of transfer \par in form satisfactory to the purchasers thereof, duly executed by the \par Selling Management Group Member, free and clear of any Liens, against \par delivery of the Offer Price therefor.\par

\par

(g) In the event that the Prospective Buyers and the Company do not \par exercise their options to purchase any or all of the Offered Securities, \par and the Selling Management Group Member shall not have sold the remaining \par Offered Securities to the Third Party for any reason before the expiration \par of the 60-day period described in Section 2.4(e), then such Selling \par Management Group Member shall not give another Notice of Intention pursuant \par to this Section 2.4 for the period of 90 calendar days from the last day of \par such 60-day period.\par

\par

2.5 Series C First Refusal Rights. \par

\par

(a) If a holder of Series C Preferred (the "Selling Series C Member") \par proposes to transfer any Restricted Securities of the Company to (i) a \par customer of the Company, (ii) to any entity which is engaged in the \par business of selling, promoting, manufacturing and/or developing catalytic \par coatings (a "Competitor") or (iii) to any Affiliate of a Competitor or \par customer of the Company (the "Series C Offered Securities"), prior to any \par Transfer such Selling Series C Member shall obtain a bona fide arm's-length \par written offer (a "Series C Bona Fide Offer") from an independent party \par unrelated to such Series C Member (the "Series C Third Party") for the \par purchase of such Series C Offered Securities and shall give written notice \par of the proposed Transfer (the "Series C Notice of Intention") to the \par Company and to each of the Series C Shareholders (the "Series C Prospective \par Buyers"), accompanied by a copy of the Series C Bona Fide Offer and \par evidence demonstrating to the reasonable satisfaction of the Company the \par Series C Third Party's ability to consummate the purchase of the Series C \par Offered Securities in accordance with the terms of the Series C Bona Fide \par Offer. The Series C Bona Fide Offer shall identify such Series C Third \par Party, the price per share (which shall be in cash or notes) being offered \par by the Series C Third Party for the Series C Offered Securities (the \par

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"Series C Offer Price") and all other material terms of the Series C Bona Fide Offer. For purposes of this Section 2.5(a) only, the Series C Offered Securities shall not include any proposed transfer of Restricted Securities by an original holder of Series C Preferred Stock to an Affiliate of such original holder of Series C Preferred Stock.

(b) For a period of thirty (30) days following its receipt of the Series C Notice of Intention, the Company shall have an irrevocable right to purchase all or any portion of the Offered Securities at the Offer Price, exercisable by delivery of notice (the "Series C Company Notice") to the Selling Series C Member, with a copy to each of the Series C Prospective Buyers, specifying the number of Series C Offered Securities with respect to which the Company is exercising its option.

(c) For a period of thirty (30) days following its receipt of the Series C Company Notice or, if no Series C Company Notice is so received, for a period of sixty (60) days following its receipt of the Series C Notice of Intention, each of the Series C Prospective Buyers shall have the irrevocable right to purchase, upon such terms and conditions as may be individually negotiated with the Series C Third Party, any or all of the Series C Offered Securities which the Company has elected not to purchase, Pro Rata among the Series C Prospective Buyers; provided, however, that in the event any Series C Prospective Buyer does not purchase any or all of its Pro Rata portion of the Series C Offered Securities, the other Series C Prospective Buyers shall have the right to purchase such portion, Pro Rata, until all of such Series C Offered Securities are purchased or until such other Series C Prospective Buyers do not desire to purchase any more Series C Offered Securities. The right of the Series C Prospective Buyers pursuant to this Section 2.5(c) shall be exercisable by delivery of a notice (the "Series C Prospective Buyer Notice") setting forth the maximum number of Series C Offered Securities that such Series C Prospective Buyer wishes to purchase, including any number which would be allocated to such Series C Prospective Buyer in the event any other Series C Prospective Buyer does not purchase all or any portion of its Pro Rata portion, to the Selling Series C Member and the Company and shall expire if unexercised within such 30-day or 60-day period, as applicable.

(d) Notwithstanding the foregoing provisions of this Section 2.5, unless the Selling Series C Member shall have consented to the purchase of less than all of the Series C Offered Securities, no Series C Prospective Buyer may purchase any Series C Offered Securities unless all of the Series C Offered Securities are to be purchased (whether by the Company or the Series C Prospective Buyer, or any combination thereof).

(e) If all notices required to be given pursuant to this Section 2.5 have been duly given, and the Company and the Series C Prospective Buyers determine not to exercise their options to purchase the Series C Offered Securities or determine, with the consent of the Selling Series C Member, to exercise their options to purchase less than all of the Series C Offered Securities, then the Selling Series C Member shall have the right, for a period of sixty (60) days from the earlier of (i) the expiration of the last applicable option period pursuant to this Section 2.5 or (ii) the date on which such Selling Series C Member receives notice from the Company and the Series C Prospective Buyers that they will not exercise in whole or in part the options granted pursuant to this Section 2.5, to sell to the Series C Third Party the Series C Offered Securities remaining unsold under this Section 2.5 at a price not less than the Series C Offer Price and on terms no more favorable to the Series C Third Party than the other terms set forth in the Series C Bona Fide Offer; provided, that prior to any such Transfer to the Series C Third Party, the Series C Third Party executes and delivers to the Company, for the benefit of the Company, the Selling Series C Member and all Series C Shareholders, a Joinder Agreement and thereby

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becomes a party to this Agreement.\par

\par

(f) The closing of any purchase and sale pursuant to this Section 2.5 \par (other than to the Series C Third Party) shall take place on such date, not \par later than fifteen (15) business days after the later of delivery to the \par Selling Series C Member of the (i) the Series C Company Notice and (ii) the \par Series C Prospective Buyer Notice, as the Company and the Selling Series C \par Member shall select. At the closing of such purchase and sale, the Selling \par Series C Member shall deliver certificates evidencing the Series C Offered \par Securities being sold duly endorsed, or accompanied by written instruments \par of transfer in form satisfactory to the purchasers thereof, duly executed \par by the Selling Series C Member, free and clear of any Liens, against \par delivery of the Series C Offer Price therefor.\par

\par

(g) In the event that the Series C Prospective Buyers and the Company \par do not exercise their options to purchase any or all of the Series C \par Offered Securities, and the Selling Series C Member shall not have sold the \par remaining Series C Offered Securities to the Series C Third Party for any \par reason before the expiration of the 30-day period described in Section \par 2.5(e), then such Selling Series C Member shall not give another Series C \par Notice of Intention pursuant to this Section 2.5 for a period of 90 \par calendar days from the last day of such 60-day period.\par

\par

\pard\qc ARTICLE III\par

TAG-ALONG RIGHTS; PREEMPTIVE RIGHTS\par

\par

\pard 3.1 Management Tag-Along Rights. \par

\par

(a) If any Management Group Member (the "Transferor") proposes to \par Transfer, other than to a Permitted Transferee, an amount of Restricted \par Securities of the Company ("Transferor Shares") that would result in \par proceeds to the Transferor of at least \$100,000, to one or more Third \par Parties (each such Person, a "Buyer"), then, as a condition to such \par Transfer, the Transferor shall cause the Buyer to include an offer (the \par "Article III Offer") to each Series C Shareholder (collectively, the \par "Offerees"), to purchase from each Offeree, at the option of each Offeree, \par that number of shares of Restricted Securities determined in accordance \par with Section 3.1(b), on the same terms and conditions as are applicable \par to the Transferor Shares (which shall include, without limitation, any \par consideration to be received by the Transferor in the form of bonuses, \par consulting fees, non-competition payments and other payments which are, \par in the reasonable belief of the majority of the Series C Shareholders, \par designed as additional consideration for the shares). The Transferor \par shall provide a written notice (the "Inclusion Notice") of the \par Article III Offer to each Offeree, which may accept the Article III Offer \par by providing a written notice of acceptance of the Article III Offer to the \par Transferor within forty (40) days of delivery of the Inclusion Notice.\par

\par

(b) Each Offeree shall have the right (an "Inclusion Right") to sell \par pursuant to the Article III Offer up to that percentage of its Restricted \par Securities, on a Diluted Basis, as equals the percentage of Restricted \par Securities, on a Diluted Basis, proposed to be sold by the Transferor (the \par shares elected to be sold, being the "Inclusion Shares"); provided that if \par the Buyer does not agree to purchase all of the Transferor Shares and the \par Inclusion Shares, then (i) the number of Transferor Shares shall be reduced \par by the amount of Restricted Securities sought to be sold by the Offerees \par pursuant to their exercise of the Inclusion Right; and (ii) if necessary, \par the Inclusion Shares shall be included on a Pro Rata basis among the \par Offerees in accordance with the number of Inclusion Shares held by each \par Offeree. \par

\par

(c) The Buyer shall have 70 days, commencing on the 20th day after \par

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delivery of the Inclusion Notice, in which to purchase from the Transferor \par and the Offerees, the number of Restricted Securities with respect to which \par the Inclusion Right is exercised and the number of Transferor Shares. The \par material terms of such sale, including, without limitation, price and form \par of consideration, shall be as set forth in the Inclusion Notice. If at the \par end of such 70-day period the Buyer has not completed the purchase of the \par Transferor Shares and the Offerees' Restricted Securities (if any) proposed \par to be sold, the provisions of this Section 3.1 shall continue to be in \par effect.\par \par

(d) Upon the consummation of the sale or other disposition of the \par Transferor Shares and Restricted Securities of the Offerees to the Buyer \par pursuant to the Article III Offer, the Buyer shall pay to the Transferor \par and each of the Offerees their respective portions of the sales price of \par the Restricted Securities sold or otherwise disposed of pursuant thereto, \par and shall furnish such other evidence of the completion of such sale or \par other disposition and the terms thereof as may be reasonably requested by \par the Offerees.\par \par

3.2 Pre-Emptive Right. \par \par

(a) Grant. The Company hereby grants to each holder of shares \par of Series C Preferred the preemptive right to purchase, on the same terms \par and conditions and for the same price as the New Securities (as defined \par below) are issued to other persons by the Company, that Pro Rata portion of \par any New Securities which shall be equal to that number of New Securities as \par is equal to the product obtained by multiplying (a) the total number of New \par Securities to be issued by (b) the quotient obtained by dividing (i) total \par number of shares of Common Stock on a Diluted Basis held of record by the \par shareholder by (ii) the total number of shares of Common Stock on a Diluted \par Basis of the Company then outstanding.\par \par

(b) Notice. The Company shall give to each holder of Series C \par Preferred Stock written notice of the proposed offer to sell and issue any \par New Securities, which written notice shall contain the terms of such \par proposed sale and issuance in reasonable detail. The Company shall deliver \par such notice to the Series C Shareholder at least 60 days prior to the first \par date which such New Securities are proposed to be sold and issued to any \par third party. The Series C Shareholders shall have the right to exercise \par the right granted pursuant to paragraph 3.2(a) above by giving written \par notice thereof to the Company within 60 days after the Company's delivery \par of the notice, specifying the amount of New Securities which the Series C \par Shareholder desires to purchase. In the event the Series C Shareholder \par does not give notice of exercise within such 60 day period, the Company may \par sell and issue New Securities without regard to the Series C Shareholder's \par rights under this section 3.2(b); provided that the failure of the Series C \par Shareholder to exercise the right to purchase with respect to any \par particular sale and issuance of New Securities shall not affect the Series \par C Shareholder's right to purchase New Securities in any subsequent sale and \par issuance by the Company.\par \par

(c) New Securities. The term "New Securities" as used in this \par Section 3.2 means shares of Common Stock or any rights, options, warrants \par or other securities (including debt securities) exercisable or exchangeable \par for or convertible into shares of Common Stock which the Company intends to \par sell or issue after the Effective Date, except for such securities which \par are issued or issuable:\par \par

1. in connection with an underwritten public offering;\par
2. upon conversion of shares of Preferred Stock or other \par securities convertible into or exchangeable for Common Stock;\par
3. as dividends or distributions on Preferred Stock or Common \par

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Stock;\par

4. to banks, equipment financing companies or equipment \par lessors (not to exceed in the aggregate more than 169,000 shares of Common \par Stock); \par

5. in connection with strategic alliances, business contracts \par or similar transactions approved by no less than six-sevenths of the \par Company's Board to induce such business partner to use, promote or assist \par the Company in the development of its products; \par

6. in connection with any stock split, stock dividend, \par reclassification, recapitalization or similar event;\par

7. in connection with a business acquisition by the Company, \par whether by merger, consolidation, purchase of assets, sale or exchange of \par stock or otherwise (not to exceed in the aggregate 5% of the then \par outstanding equity of the Company without the prior consent of the holders \par of at least 66 2/3% of the Series C Preferred); or\par

8. to current or prospective officers, directors or employees \par of or consultants to the Company or its affiliates, including the issuance \par or granting of options or rights to purchase Common Stock to such officers, \par directors, employees or consultants (not to exceed in the aggregate 7% of \par the then outstanding equity of the Company without the prior consent of the \par holders of at least 66 2/3% of the Series C Preferred).\par

\par

Notwithstanding any of the exceptions stated above, the Series C \par Shareholders shall have a preemptive right pursuant to this Section 3.2(a) \par in any situation in which the holders of the Series A Preferred Stock have \par preemptive rights under the Company's Amended and Restated Articles of \par Incorporation.\par

\par

The Company may impose any conditions on any sale and issuance of \par New Securities to which the right granted by Section 3.2(a) above applies \par which the Company reasonably believes are necessary to assure compliance \par with the applicable federal and state securities laws, including, without \par limitation, requiring that all purchasers and offerees of the New \par Securities be "accredited investors" (as defined in Regulation D \par promulgated under the Securities Act).\par

\par

(d) Limitation. Notwithstanding anything in this Agreement to the \par contrary, the Series C Shareholder shall not have a pre-emptive right under \par this Section 3.2 to participate in any sale and issuance of any New \par Securities by the Company if (i) the Company's sale and issuance of the New \par Securities to the Series C Shareholder would not comply with all applicable \par federal and state securities laws, other than as a result of a voluntary \par act by the Company which can be brought into compliance without undue \par expense to the Company; or (ii) the Series C Shareholder fails to comply \par with any terms and conditions of its participation which are reasonably \par imposed by the Company and which apply generally to all persons \par participating in the sale and issuance of such New Securities.\par

\par

\pard\qc ARTICLE IV\par

MISCELLANEOUS\par

\par

4.1 Election of Directors. For so long as Cinergy Ventures II, LLC \par owns 281,690 shares of Series C Preferred, subject to equitable adjustment \par for stock splits, stock dividends or the like, each of the Series C \par Shareholders hereby agrees that one of the two members of the Company's \par Board of Directors to be elected by holders of the Series C Preferred, as \par provided by the Company's Articles of Incorporation, shall be designated by \par Cinergy Ventures II, LLC. The Series C Shareholders further agree that the \par second member of the Company's Board of Directors to be elected by holders \par of the Series C Preferred, as provided by the Company's Articles of \par Incorporation, shall be designated by Cinergy Ventures II, LLC until the \par Company's annual meeting of shareholders in 2003. Thereafter, the second \par

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member of the Company's Board of Directors to be elected by holders of the Series C Preferred, as provided by the Company's Articles of Incorporation, shall be elected by a majority of the holders of Series C Preferred, voting together as a class. In addition, a vacancy in the directorship designated by Cinergy Ventures II, LLC shall be filled only by the designee of Cinergy Ventures II, LLC.

4.2 Series C Protective Provisions. Except as otherwise required by law, so long as 680,000 shares of Series C Preferred are outstanding, subject to equitable adjustment for any stock splits, stock dividends or the like, the Company shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the outstanding shares of Series C Preferred, do any of the following:

(a) redeem or repurchase any outstanding shares of Common Stock or Preferred Stock, or securities convertible or exchangeable into, or exercisable for, Common Stock or Preferred Stock, other than (i) pursuant to agreements between the Company and any of its employees providing the Company with the right of such repurchase at original cost upon any termination of employment or (ii) the redemption of the Series C Preferred pursuant to Section 7 of Article IV of the Company's Amended and Restated Articles of Incorporation.

(b) authorize, create or issue any new or existing shares of any class or classes or series of capital stock having any preference or priority as to dividends or amounts distributable upon dissolution, liquidation or winding up of the Company superior to or on a parity with any such preference or priority of the Series C Preferred, or authorize or issue any shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exercisable or exchangeable for, or having option rights to purchase, any shares of stock of the Company having any preference or priority as to dividends or amounts distributable upon dissolution, liquidation or winding up of the Company superior to or on a parity with any such preference or priority of the Series C Preferred;

(c) reclassify any Common Stock into shares having any preference or priority as to dividends or amounts distributable upon dissolution, liquidation or winding up of the Company superior to or on a parity with any such preference or priority of the Preferred Stock;

(d) amend or repeal any provision of, or add any provision to, the Company's Amended and Restated Articles of Incorporation or Bylaws;

(e) effect (i) any voluntary or involuntary liquidation, dissolution or winding up of the Company, (ii) a merger, consolidation or other reorganization of the Company into or with another corporation which results in the Company's shareholders immediately prior to such transaction not holding (by virtue of such shares or securities issued solely with respect thereto) at least 50% of the voting power of the surviving or continuing entity following such transaction or (iii) a sale of all or substantially all of the assets of the Company;

(f) dissolve or liquidate the Company pursuant to Section 7 of the Bankruptcy Code;

(g) increase or decrease the authorized number of directors constituting the Board or changing the requirements for a director;

(h) declare a dividend or extraordinary dividend with regard to any security.

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4.3 Governing Law; Venue; Disputes. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York, notwithstanding any conflict of law provision to the contrary; provided, however, that any matters herein within the purview of the California Corporations Code shall be governed by the California Corporations Code. With respect to any disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction of, and venue in, the federal courts within the State of New York, County of New York. In the event of any dispute between the Company and/or any of the other parties hereto arising under this Agreement, the Registration Rights Agreement, the Investment Agreement or the Company's Articles of Incorporation, as amended, the prevailing party in any litigation shall be entitled to payment of its attorneys' fees and other costs and expenses incurred in connection with such dispute.

4.4 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF SUCH PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

4.5 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may be amended, modified or supplemented only by a written instrument duly executed by the parties hereto.

4.6 Term. This Agreement shall terminate upon the earliest to occur of (i) the initial public offering of Common Stock of the Company; (ii) a Sale of the Company and (iii) twenty-five years from the date hereof.

4.7 Inspection. For so long as this Agreement shall remain in effect, this Agreement shall be made available for inspection by any holder of Restricted Securities at the principal executive offices of the Company.

4.8 Recapitalization, Exchanges, Etc., Affecting Restricted Securities. The provisions of this Agreement shall apply, to the full extent set forth herein with respect to the Restricted Securities, to any and all shares of the capital stock of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets, or otherwise, including shares issued by a parent corporation in connection with a triangular merger) which may be issued in respect of, in exchange for, or in substitution of, Restricted Securities and shall be appropriately adjusted for any stock dividends, splits, reverse splits, combinations, reclassifications and the like occurring after the date hereof.

4.9 Compliance with Regulations. Whenever a party is entitled to purchase Restricted Securities pursuant to the provisions of this Agreement, any closing time period specified in such provision shall be tolled until any necessary governmental approval is received including, without limitation, approval under the Hart-Scott-Rodino Antitrust

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Improvements Act of 1976.\par

\par

4.10 Waiver. No waiver by any party of any term or condition of this \par Agreement, in one or more instances, shall be valid unless in writing, and \par no such waiver shall be deemed to be construed as a waiver of any \par subsequent breach or default of the same or similar nature.\par

\par

4.11 Successors and Assigns. Except as otherwise expressly provided \par herein, this Agreement shall be binding upon and inure to the benefit of \par the parties hereto and their respective heirs, personal representatives, \par successors and permitted assigns (including, without limitation, \par transferees of Restricted Securities); provided, however, that (i) nothing \par contained herein shall be construed as granting any Shareholder the right \par to transfer any Restricted Securities except in accordance with this \par Agreement, (ii) any Third Party that acquires Restricted Securities in \par accordance with this Agreement shall be bound by the provisions of this \par Agreement and (iii) only the provisions of this Agreement that are \par expressly applicable to such type of Shareholder shall be applicable to \par such Shareholder and to the Restricted Securities in the hands of such \par Shareholder.\par

\par

4.12 Remedies. In the event of a breach by any party to this \par Agreement of its obligations under this Agreement, any party injured by \par such breach, in addition to being entitled to exercise all rights granted \par by law, including recovery of damages and costs (including reasonable \par attorneys' fees), will be entitled to specific performance of its rights \par under this Agreement. The parties agree that the provisions of this \par Agreement shall be specifically enforceable, it being agreed by the parties \par that the remedy at law, including monetary damages, for breach of any such \par provision will be inadequate compensation for any loss and that any defense \par in any action for specific performance that a remedy at law would be \par adequate is waived.\par

\par

4.13 Invalid Provisions. If any provision of this Agreement is held \par to be illegal, invalid or unenforceable under any present or future law, \par and if the rights or obligations of any party hereto under this Agreement \par will not be materially and adversely affected thereby, (i) such provision \par will be fully severable, (ii) this Agreement will be construed and enforced \par as if such illegal, invalid or unenforceable provision had never comprised \par a part hereof, (iii) the remaining provisions of this Agreement will remain \par in full force and effect and will not be affected by the illegal, invalid \par or unenforceable provision or by its severance herefrom and (iv) in lieu of \par such illegal, invalid or unenforceable provision, there will be added \par automatically as a part of this Agreement a legal, valid and enforceable \par provision as similar in terms to such illegal, invalid or unenforceable \par provision as may be possible.\par

\par

4.14 Headings. The headings used in this Agreement have been inserted \par for convenience of reference only and do not define or limit the provisions \par hereof.\par

\par

4.15 Further Assurances. Each party hereto shall cooperate and shall \par take such further action and shall execute and deliver such further \par documents as may be reasonably requested by any other party in order to \par carry out the provisions and purposes of this Agreement.\par

\par

4.16 Gender. Whenever the pronouns "he" or "his" are used herein they \par shall also be deemed to mean "she" or "hers" or "it" or "its" whenever \par applicable. Words in the singular shall be read and construed as though in \par the plural and words in the plural shall be construed as though in the \par singular in all cases where they would so apply.\par

\par

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4.17 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

4.18 Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally against written receipt or by facsimile transmission or mailed by prepaid first class mail, return receipt requested, or mailed by overnight courier prepaid to the parties at the following addresses or facsimile numbers:

(i) If to any Series C Investor: Such Investor's address set forth on the Schedule of Investors to the Investment Agreement.

(ii) If to the Company, to:

Catalytic Solutions, Inc.
1640 Fiske Place
Oxnard, CA 93033
Facsimile No.: (805) 486-0511
Attn.: Chief Executive Officer

with a copy to:

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, New York 10178
Facsimile No.: 212-309-627
Attn.: Christopher T. Jensen, Esq.

All such notices, requests and other communications will (w) if delivered personally to the address as provided in this Section 4.18, be deemed given upon delivery, (x) if delivered by facsimile transmission to the facsimile number as provided in this Section 4.16, be deemed given upon facsimile confirmation, and (y) if delivered by mail in the manner described above to the address as provided in this Section 4.18, upon the earlier of the third business day following mailing or upon receipt and (z) if delivered by overnight courier to the address as provided in this Section 4.18, be deemed given on the earlier of the first business day following the date sent by such overnight courier or upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section 4.18). Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto.

4.19 Joinder Agreement. Each of the Shareholders severally agrees that it will not transfer any of its Restricted Securities to any third party (including any Permitted Transferee) unless such transferee has executed a Joinder Agreement by which such transferee becomes a party to this Agreement.

4.20 Investors Rights Agreement. This Agreement shall supersede the Investors Rights Agreement dated April 16, 2001 between the Company and the parties thereto. Such Investors Rights Agreement to which any Series C Investor is a party thereto shall be considered null and void.

Attachment 1
Form of Joinder Agreement

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The name of this corporation is Catalytic Solutions, Inc. \par
\par
\pard\qc II\par
\pard\par

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

This corporation is authorized to issue two classes of stock to be \par designated, respectively, "Common Stock" and "Preferred Stock." The total \par number of shares which this corporation is authorized to issue is Ten \par Million (10,000,000) shares, Seven Million Five Hundred Thousand \par (7,500,000) shares of which shall be Common Stock (the "Common Stock") and \par Two Million Five Hundred Thousand (2,500,000) shares of which shall be \par Preferred Stock (the "Preferred Stock"), each having no par value. The \par first series of Preferred Stock shall be designated Series A Preferred \par Stock and shall consist of One Hundred Thousand (100,000) shares (such \par series of Preferred Stock being sometimes referred to herein as "Series A \par Preferred"). The second series of Preferred Stock shall be designated \par Series B Preferred Stock and shall consist of One Hundred Thirty-Nine \par Thousand (139,000) shares (such series of Preferred Stock being sometimes \par referred to herein as "Series B Preferred"). The third series of Preferred \par Stock shall be designated Series C Preferred Stock and shall consist of One \par Million, Nine Hundred and Thirty Five Thousand (1,935,000) shares (such \par series of Preferred Stock being sometimes referred to herein as "Series C \par Preferred"). The relative rights, preferences, privileges and restrictions \par granted to or imposed upon the Series A Preferred, Series B Preferred and \par Series C Preferred are as follows (any reference herein below to "Preferred \par Stock" shall include Series A Preferred, Series B Preferred, Series C \par Preferred and all additional series of Preferred Stock which may be \par designated in the future):\par
\par

1. Dividend Rights of Preferred Stock.\par
\par

1.1 Series C Preferred. The holders of the outstanding Series C \par Preferred shall be entitled to receive, when, as and if declared by the \par Board of Directors, out of any assets at the time legally available \par therefor, dividends for each share, payable in cash at a rate per annum \par equal to 8% of \$17.75 per share of Series C Preferred ("Accruing \par Dividends"). To the extent declared, such dividends shall be payable on a \par monthly basis, to the holders of record as they appear on the register of \par this corporation for the shares of Series C Preferred five (5) business \par days prior to such dividend payment date. Accruing Dividends shall be \par cumulative and shall accrue monthly from the date of issue, without \par interest, whether or not such dividends have been declared. Accruing \par Dividends shall be paid upon (a) any Liquidating Event, (b) any conversion \par of the Series C Preferred into shares of Common Stock in accordance with \par Section 3 of these Articles, and (c) any redemption of the Series C \par Preferred in accordance with Section 7 of these Articles.\par
\par

1.2 Series A Preferred and Series B Preferred. So long as any shares \par of Series C Preferred are outstanding, no dividend shall be paid on the \par Series A Preferred, the Series B Preferred or the Common Stock, without the \par prior consent of the holders of a majority of the Series C Preferred.\par
\par

2. Liquidation Preference.\par
\par

2.1 In the event of any voluntary or involuntary liquidation, \par

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dissolution or winding up of this corporation or a Change of Control as defined in Section 2.6 hereof (together, a "Liquidating Event"), the holders of shares of Series C Preferred then outstanding shall be entitled to be paid out of the assets of this corporation available for distribution to its shareholders, prior to and in preference over holders of Series A Preferred, Series B Preferred, Common Stock or any other class or series of stock ranking junior to the Series C Preferred Stock, by reason of their ownership thereof, in respect of each share of Series C Preferred outstanding, an amount equal to \$35.50 per share, plus all accrued but unpaid dividends and all other declared but unpaid dividends thereon (the "Series C Liquidation Preference"), subject to equitable adjustment for any stock splits, stock dividends or the like. If, upon any such Liquidating Event, the remaining assets of this corporation available for distribution to its holders of Series C Preferred shall be insufficient to pay the holders of shares of Series C Preferred the full amount to which they shall be entitled, the holders of shares of Series C Preferred shall share ratably in any distribution of the remaining assets and funds of this corporation in proportion to the respective amounts which would otherwise be payable in respect of such shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 After payment of the Series C Liquidation Preference, the holders of Series A Preferred and the Series B Preferred then outstanding shall be entitled to be paid out of the assets of this corporation available for distribution to its shareholders, prior to and in preference over holders of Common Stock or any other class or series of stock ranking junior to the Series A Preferred and Series B Preferred, by reason of their ownership thereof, the following: (a) to the holders of Series A Preferred, in respect of each share of Series A Preferred outstanding, an amount equal to \$15.00 per share, plus all declared but unpaid dividends thereon (the "Series A Liquidation Preference") and (b) to the holders of Series B Preferred, in respect of each share of Series B Preferred outstanding, an amount equal to \$20.00 per share, plus all declared but unpaid dividends thereon (the "Series B Liquidation Preference"), in each case subject to equitable adjustment for any stock splits, stock dividends or the like. If, upon any such Liquidating Event, the remaining assets of this corporation available for distribution to its holders of Series A Preferred and Series B Preferred shall be insufficient to pay the holders of shares of Series A Preferred and Series B Preferred the full amount to which they shall be entitled, the holders of shares of Series A Preferred and Series B Preferred shall share ratably in any distribution of the remaining assets and funds of this corporation in proportion to the respective amounts which would otherwise be payable in respect of such shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.3 After payment of the Series A Liquidation Preference and the Series B Liquidation Preference, the holders of the Common Stock and the holders of the Series C Preferred participating on an as-if-converted basis shall be entitled to share ratably in the remaining assets of the Corporation until the holders of the Series C Preferred have received an aggregate amount (including what was received pursuant to Section 2.1) equal to \$44.375 per share in respect of all outstanding shares of Series C Preferred Stock (the "Series C and Common Liquidation Preference").

2.4 After payment of all preferential amounts required to be paid pursuant to Sections 2.1, 2.2 and 2.3 above, upon a Liquidating Event, all of the remaining assets and funds of this corporation available for distribution to its shareholders shall be distributed to the holders of the Common Stock pro rata based on the number of shares of Common Stock held by each.

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2.5 This corporation shall give each holder of Series A Preferred, Series B Preferred and Series C Preferred written notice of an impending Liquidating Event not later than ten (10) days prior to the date set for the closing of such transaction, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2 and this corporation shall thereafter give such holders prompt notice of any material changes in the terms of the transaction or the information supplied in the first notice. The transaction shall in no event take place sooner than ten (10) days after the corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of 66 2/3% of the shares of each class of Series A Preferred, Series B Preferred and Series C Preferred then outstanding.

2.6 For purposes of this Section, a liquidation, dissolution or winding up of this corporation shall be deemed to include (unless the holders of 66 2/3% of the shares of each class of Series A Preferred, Series B Preferred and Series C Preferred then outstanding, vote otherwise), (a) the merger, consolidation, recapitalization or other reorganization of this corporation into or with another corporation which results in this corporation's shareholders immediately prior to such transaction not holding (by virtue of such shares or securities issued solely with respect thereto) at least 50% of the voting power of the surviving or continuing entity following such transaction and (b) the sale of all or substantially all of the assets of this corporation (each a "Change of Control").

3. Conversion. The holders of the Series A Preferred, Series B Preferred and Series C Preferred shall have conversion rights as follows (the "Conversion Rights"):

3.1 Right to Convert and Automatic Conversion.

3.1.1 (a) Each share of Series A Preferred shall be convertible, at the option of the holder thereof, at any time and from time to time, into one (1) fully paid and nonassessable share of Common Stock (the "Series A Conversion Ratio"). Such initial Series A Conversion Ratio shall be subject to adjustment as provided below.

(b) Each share of Series B Preferred shall be convertible, at the option of the holder thereof, at any time and from time to time, into one (1) fully paid and nonassessable share of Common Stock (the "Series B Conversion Ratio"). Such initial Series B Conversion Ratio shall be subject to adjustment as provided below.

(c) Each share of Series C Preferred shall be convertible, at the option of the holder thereof, at any time and from time to time, into one fully paid and nonassessable share of Common Stock (the "Series C Conversion Factor"). Such initial Series C Conversion Factor shall be subject to adjustment as provided below. Upon any conversion of the Series C Preferred into shares of Common Stock pursuant to this Section 3, this corporation shall pay in cash an amount equal to all accrued but unpaid dividends and all other dividends declared but unpaid on the Series C Preferred.

(i) If this corporation fails to enter into the agreement referred to in Section 8.12 of the Investment Agreement dated as of November 15, 2001, among this corporation and the Investors named therein (the "Investment Agreement") by January 31, 2002, the Series C Conversion Factor then in effect, including any adjustment made pursuant to Section

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3.4, 3.5 or 3.6 of these Articles, shall be adjusted such that the number of shares of Common Stock that shall be issued in exchange for each share of Series C Preferred shall be multiplied by 1.3.

(ii) If this corporation fails to book revenues and generate a gross margin for the year ended December 31, 2002 in the amounts set forth in Section 8.13 of the Investment Agreement, the Series C Conversion Factor as in effect, including any adjustments made pursuant to subsection (i) above or Section 3.4, 3.5 or 3.6 of these Articles, shall be adjusted such that the number of shares of Common Stock that shall be issued in exchange for each share of Series C Preferred shall be multiplied by 1.25. For purposes of this subsection (ii), revenues shall be determined by using Generally Accepted Accounting Principles.

(iii) If this corporation enters into (a) the agreement referred to in Section 8.12 of the Investment Agreement by December 31, 2002 and (b) the agreements set forth in Section 8.14 of the Investment Agreement by December 31, 2002, the Series C Conversion Factor as in effect, including any adjustments made pursuant to subsections (i) and/or (ii) above or Section 3.4, 3.5 or 3.6 of these Articles, shall be adjusted such that the number of shares of Common Stock that shall be issued in exchange for each share of Series C Preferred shall be multiplied by .909.

As used herein, "Conversion Ratio" shall mean the Series A Conversion Ratio, the Series B Conversion Ratio or the Series C Conversion Factor, as applicable in context.

3.1.2 Each share of Series A Preferred, Series B Preferred and Series C Preferred shall automatically be converted into shares of Common Stock at the then effective Conversion Ratio, immediately upon the closing of the offering pursuant to the corporation's registration statement on Form S-1 (or any other form equivalent thereto) pursuant to which Common Stock is sold to the public by this corporation (or selling shareholders, if any) in an underwritten initial public offering registered under the Securities Act of 1933, as amended, and realizes, aggregate proceeds of not less than \$25,000 and a per share offering price of not less than \$44.375 (subject to equitable adjustment for any stock splits, combinations, consolidations, recapitalizations, reorganizations, reclassifications, stock distributions, stock dividends, or other similar events with respect to such shares) (a "Public Offering").

3.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Any conversion of shares of Preferred Stock by any holder shall be done on an aggregate basis taking into account all shares of Preferred Stock held by such holder.

3.3 Mechanics of Conversion. In order to convert shares of Preferred Stock into shares of Common Stock, the holder shall surrender the certificate or certificates for shares of Series A Preferred, Series B Preferred or Series C Preferred at the office of the transfer agent (or at the principal office of this corporation if this corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by this corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form reasonably satisfactory to this corporation, duly executed by the registered holder or his, her or its

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attorney duly authorized in writing. The date of a holder's conversion \par notice to this corporation pursuant to Section 3.1.1 of this Article III, \par or the closing of the Public Offering causing automatic conversion pursuant \par to Section 3.1.2 of this Article III, shall be the conversion date (the "Conversion Date"). This corporation shall, as soon as practicable \par after the Conversion Date, issue and deliver at such office to such \par holder, or to its nominees, a certificate or certificates for the number \par of shares of Common Stock to which such holder shall be entitled.\par \par

3.3.2 This corporation shall at all times during which the Series A \par Preferred, Series B Preferred or Series C Preferred shall be outstanding, \par reserve and keep available out of its authorized but unissued stock, for \par the purpose of effecting the conversion of the Series A Preferred, Series B \par Preferred and Series C Preferred, such number of its duly authorized shares \par of Common Stock as shall from time to time be sufficient to effect the \par conversion of all outstanding shares of Series A Preferred, Series B \par Preferred and Series C Preferred. \par \par

3.3.3 Any share of Series A Preferred, Series B Preferred or Series C \par Preferred which shall have been surrendered for conversion as herein \par provided shall no longer be deemed to be outstanding and all rights with \par respect to any such share, including the rights, if any, to receive \par dividends and notices and to vote, shall immediately cease and terminate on \par the Conversion Date, except only the right of the holder thereof to receive \par shares of Common Stock in exchange therefor. Any shares of Series A \par Preferred, Series B Preferred or Series C Preferred so converted shall be \par retired and canceled and shall not be reissued, and this corporation may \par from time to time take such appropriate action as may be necessary to \par reduce the number of shares of authorized Series A Preferred, Series B \par Preferred and Series C Preferred accordingly.\par \par

3.3.4 If the conversion is pursuant to Subsection 3.1.2 in connection \par with a Public Offering, the conversion may at the option of any holder \par tendering Series A Preferred, Series B Preferred or Series C Preferred for \par conversion be conditioned upon the closing of the sale of securities \par pursuant to such offering, in which event the person(s) entitled to receive \par the Common Stock issuable upon such conversion shall not be deemed to have \par converted such Series A Preferred, Series B Preferred or Series C Preferred \par until immediately prior to the closing of the sale of securities.\par \par

3.4 Adjustments to Series C Conversion Factor for Diluting Issues.\par \par

3.4.1 Special Definitions. For purposes of this Section 3.4, the \par following definitions shall apply:\par \par

(a) "Original Issue Date" shall mean the date on which the first \par share of Series C Preferred is first issued.\par \par

(b) "Series C Conversion Price" shall mean \$17.75 per share of \par Common Stock, as such price may be adjusted from time to time pursuant to \par this Section 3.\par \par

(c) "Permitted Issuance" shall mean all shares of Common Stock \par issued by this corporation after the Original Issue Date issued or \par issuable:\par \par

(1) in connection with a Public Offering; \par \par

(2) upon conversion of shares of Preferred Stock or other \par Convertible Securities (as defined below);\par \par

(3) as dividends or distributions on Preferred Stock or \par

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Common Stock; \par

\par

(4) to banks, equipment financing companies or equipment \par lessors (not to exceed in the aggregate more than 169,000 shares of Common \par Stock);\par

\par

(5) in connection with strategic alliances, business \par contracts or similar transactions approved by no less than six-sevenths of \par this corporation's Board of Directors to induce such business partner to \par use, promote or assist this corporation in the development of its products;\par

\par

(6) in connection with a business acquisition by this \par corporation, whether by merger, consolidation, purchase of assets, sale or \par exchange of stock or otherwise (not to exceed in the aggregate 5% of the \par then outstanding equity of this corporation without the prior consent of \par the holders of at least 66 2/3% of the Series C Preferred); or\par

\par

(7) to current or prospective officers, directors or \par employees of or consultants to this corporation or its affiliates, \par including the issuance or granting of options or rights to purchase Common \par Stock to such officers, directors, employees or consultants (not to exceed \par in the aggregate 7% of the then outstanding equity of this corporation \par without the prior consent of the holders of at least 66 2/3% of the Series \par C Preferred). \par

\par

3.4.2 Adjustment of Series C Conversion Factor and Series C \par Conversion Price. If and whenever, on or after the Original Issue Date, \par this corporation issues or sells, or in accordance with Section 3.5 is \par deemed to have issued or sold, other than pursuant to a Permitted Issuance \par and other than pursuant to an event for which adjustment is made pursuant \par to Section 3.6, any shares of Common Stock for a consideration per share \par less than the Series C Conversion Price in effect immediately prior to such \par issuance or sale, then immediately upon such issuance or sale (i) the \par Series C Conversion Price shall be reduced to a price equal to the \par consideration per share of Common Stock in such issuance or sale and (ii) \par the Series C Conversion Factor shall be increased to equal the amount \par determined by multiplying the Series C Conversion Factor in effect \par immediately prior to such issuance or sale by a fraction, the numerator of \par which is the Series C Conversion Price in effect immediately prior to such \par issuance or sale and the denominator is the Series C Conversion Price in \par effect immediately after such issuance or sale (as calculated pursuant to \par clause (i) above). \par

\par

3.5 Effect on Series C Conversion Factor and Series C Conversion \par Price of Certain Events. For purposes of determining the adjusted Series C \par Conversion Factor and Series C Conversion Price under Section 3.4.2, the \par following shall be applicable:\par

\par

(a) Issuance of Rights or Options. If this corporation in any \par manner grants any rights or options (other than pursuant to a Permitted \par Issuance and other than pursuant to an event for which adjustment is made \par pursuant to Section 3.6) to subscribe for or to purchase Common Stock or \par any stock or other securities convertible into or exchangeable for Common \par Stock (including without limitation convertible common stock) (such rights \par or options being herein called "Options" and such convertible or \par exchangeable stock or securities being herein called "Convertible \par Securities") and the price per share for which Common Stock is issuable \par upon the exercise of such Options or upon conversion or exchange of such \par Convertible Securities is less than the Series C Conversion Price in effect \par immediately prior to the time of the granting or sale of such Options, then \par the total maximum number of shares of Common Stock issuable upon the \par exercise of such Options or upon conversion or exchange of the total \par

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maximum amount of such Convertible Securities issuable upon the exercise of \par such Options shall be deemed to be outstanding and to have been issued and \par sold by this corporation for such price per share. For purposes of this \par paragraph, the "price per share for which Common Stock is issuable upon \par exercise of such Options or upon conversion or exchange of such Convertible \par Securities" is determined by dividing (x) the total amount, if any, \par received or receivable by this corporation as consideration for the \par granting of all such Options, plus the minimum aggregate amount of \par additional consideration payable to this corporation upon the exercise of \par all such Options, plus in the case of such Options that relate to \par Convertible Securities, the minimum aggregate amount of additional \par consideration, if any, payable to this corporation upon the issuance or \par sale of all such Convertible Securities and the conversion or exchange \par thereof, by (y) the total maximum number of shares of Common Stock issuable \par upon exercise of all such Options or upon the conversion or exchange of all \par such Convertible Securities issuable upon the exercise of such Options. No \par further adjustment of the Series C Conversion Factor and Series C \par Conversion Price shall be made upon the actual issuance of such Common \par Stock or of such Convertible Securities upon the exercise of such Options \par or upon the actual issuance of such Common Stock upon conversion or \par exchange of such Convertible Securities.\par \par

(b) Issuance of Convertible Securities. If this corporation in \par any manner issues or sells any Convertible Securities (other than pursuant \par to a Permitted Issuance and other than pursuant to an event for which \par adjustment is made pursuant to Section 3.6) and the price per share for \par which Common Stock is issuable upon such conversion or exchange is less \par than the Series C Conversion Price in effect immediately prior to the \par issuance or sale of such Convertible Securities, then the maximum number of \par shares of Common Stock issuable upon conversion or exchange of such \par Convertible Securities shall be deemed to be outstanding and to have been \par issued and sold by this corporation for such price per share. For the \par purposes of this paragraph, the "price per share for which Common Stock is \par issuable upon such conversion or exchange" is determined by dividing (x) \par the total amount received or receivable by this corporation as \par consideration for the issuance or sale of all such Convertible Securities, \par plus the minimum aggregate amount of additional consideration, if any, \par payable to this corporation upon the conversion or exchange thereof, by (y) \par the total maximum number of shares of Common Stock issuable upon the \par conversion or exchange of all such Convertible Securities. No further \par adjustment of the Series C Conversion Factor and Series C Conversion Price \par shall be made upon the actual issuance of such Common Stock upon conversion \par or exchange of such Convertible Securities, and, if any such issuance or \par sale of such Convertible Securities is made upon exercise of any Options \par for which adjustments of the Series C Conversion Factor and Series C \par Conversion Price have been or are to be made pursuant to other provisions \par of Section 3.5(a), no further adjustment of the Series C Conversion Factor \par and Series C Conversion Price shall be made by reason of such issuance or \par sale.\par \par

(c) Change in Option Price or Series C Conversion Factor. If \par the purchase price provided for in any Options, the additional \par consideration, if any, payable upon the issue, conversion or exchange of \par any Convertible Securities or the rate at which any Convertible Securities \par are convertible into or exchangeable for Common Stock changes at any time, \par the Series C Conversion Factor in effect at the time of such change shall \par be readjusted to the Series C Conversion Factor which would have been in \par effect at such time had such Options or Convertible Securities still \par outstanding provided for such changed purchase price, additional \par consideration or changed conversion rate, as the case may be, at the time \par initially granted, issued or sold and the Series C Conversion Price shall \par be correspondingly readjusted.\par

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\par

(d) Treatment of Expired Options and Unexercised Convertible Securities. Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Securities, in either case, without the exercise of such Option or right, the Series C Conversion Factor and Series C Conversion Price then in effect shall be adjusted to the Series C Conversion Factor and Series C Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent not exercised in full and outstanding immediately prior to such expiration or termination, never been issued.

\par

(e) Calculation of Consideration Received. If any Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the amount paid therefor. In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by this corporation shall be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by this corporation shall be the fair market value thereof as of the date of receipt. In case any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which this corporation is the surviving entity, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or marketable securities shall be determined in good faith by this corporation and approved by either (i) the directors nominated by the holders of Series C Preferred Stock pursuant to Section 4.2 below or (ii) the holders of a majority of the Series C Preferred Stock then outstanding. If such parties are unable to reach agreement within a reasonable period of time, such fair value shall be determined in good faith by an appraiser selected by this corporation and approved by either (i) the directors nominated by the holders of Series C Preferred Stock pursuant to Section 4.2 below or (ii) the holders of a majority of the Series C Preferred Stock then outstanding whose determination shall be final and binding on this corporation and all holders of the Series C Preferred Stock. The fees and expenses of such appraiser shall be paid by this corporation.

\par

(f) Record Date. If this corporation takes a record of the holders of Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

\par

3.6 Adjustment for Stock Splits, Dividends and Combinations. If this corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock or shall issue a dividend in Common Stock on its outstanding Common Stock, the Conversion Ratio then in effect immediately before that subdivision shall be proportionately increased. If this corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a lesser number of shares of Common Stock, the Conversion Ratio then in effect immediately before the combination shall be proportionately decreased. Any adjustment under this paragraph shall

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become effective at the close of business on the date the subdivision or \par combination becomes effective.\par \par

3.7 Adjustments for Other Dividends and Distributions. In the event \par this corporation at any time or from time to time after the Original Issue \par Date shall make or issue a dividend or other distribution payable in \par securities of this corporation other than shares of Common Stock, then and \par in each such event provision shall be made so that the holders of shares of \par the Series A Preferred, Series B Preferred and Series C Preferred shall \par receive upon conversion thereof, in addition to the number of shares of \par Common Stock receivable thereupon, the amount of securities of this \par corporation that they would have received had their Series A Preferred, \par Series B Preferred and Series C Preferred been converted into Common Stock \par on the date of such event and had thereafter, during the period from the \par date of such event to and including the conversion date, retained such \par securities receivable by them as aforesaid during such period giving \par application to all adjustments called for during such period, under this \par paragraph with respect to the rights of the holders of the Series A \par Preferred, Series B Preferred and Series C Preferred.\par \par

3.8 No Impairment. This corporation will not, by amendment of its \par Amended and Restated Articles of Incorporation or through any \par reorganization, transfer of assets, consolidation, merger, dissolution, \par issue or sale of securities or any other voluntary action, avoid or seek to \par avoid the observance or performance of any of the terms to be observed or \par performed hereunder by this corporation, but will at all times in good \par faith assist in the carrying out of all the provisions of this Section 3 \par and in the taking of all such action as may be necessary or appropriate in \par order to protect the Conversion Rights of the holders of the Series A \par Preferred, Series B Preferred and Series C Preferred against impairment.\par \par

3.9 Certificate as to Adjustments. Upon the occurrence of each \par adjustment or readjustment of the Conversion Ratio pursuant to this Section \par 3, this corporation at its expense shall promptly compute such adjustment \par or readjustment in accordance with the terms hereof and furnish to each \par holder, if any, of Series A Preferred, Series B Preferred and Series C \par Preferred a certificate setting forth such adjustment or readjustment and \par showing in detail the facts upon which such adjustment or readjustment is \par based and shall file a copy of such certificate with its corporate records.\par This corporation shall, upon the written request at any time of any holder \par of Series A Preferred, Series B Preferred or Series C Preferred, furnish or \par cause to be furnished to such holder a similar certificate setting forth \par (1) such adjustments and readjustments, (2) the Conversion Ratio then in \par effect and (3) the number of shares of Common Stock and the amount, if any, \par of other property which then would be received upon the conversion of such \par Preferred Stock. Despite such adjustment or readjustment, the form of each \par certification or all certificates for Series A Preferred, Series B \par Preferred and Series C Preferred, if the same shall reflect the initial or \par any subsequent Conversion Ratio, need not be changed in order for the \par adjustments or readjustments to be valued in accordance with the provisions \par of these Amended and Restated Articles of Incorporation, which shall \par control.\par \par

3.10 Notice of Record Date. In the event:\par \par

(i) that this corporation declares a dividend (or any other \par distribution) on its Common Stock payable in Common Stock or other \par securities of this corporation;\par \par

(ii) that this corporation subdivides or combines its \par outstanding shares of Common Stock;\par \par

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(iii) of any reclassification of the Common Stock of this \par corporation (other than a subdivision or combination of its outstanding \par shares of Common Stock or a stock dividend or stock distribution thereon), \par or of any consolidation or merger of this corporation into or with another \par corporation, or of the sale of all or substantially all of the assets of \par this corporation; or\par \par

(iv) of the involuntary or voluntary dissolution, liquidation or \par winding up of this corporation;\par \par then this corporation shall cause to be filed at its principal office or at \par the office of the transfer agent for the Series A Preferred, Series B \par Preferred and Series C Preferred, and shall cause to be mailed to the \par holders of the Series A Preferred, Series B Preferred and Series C \par Preferred at their last addresses as shown on the records of this \par corporation or such transfer agent, at least 10 days prior to the record \par date specified in (A) below or 20 days before the date specified in (B) \par below, a notice stating: (A) the record date of such dividend, \par distribution, subdivision or combination, or, if a record is not to be \par taken, the date as of which the holders of Common Stock of record to be \par entitled to such dividend, distribution, subdivision or combination are to \par be determined, or (B) the date on which such reclassification, \par consolidation, merger, sale, dissolution, liquidation or winding up is \par expected to become effective, and the date as of which it is expected that \par holders of Common Stock of record shall be entitled to exchange their \par shares of Common Stock for securities or other property deliverable upon \par such reclassification, consolidation, merger, sale, dissolution, \par liquidation or winding up.\par \par

3.11 Payment of Taxes. The corporation shall pay any and all issue \par and other taxes that may be payable in respect of any issue or delivery of \par Common Stock on conversion of the Series A Preferred, Series B Preferred or \par Series C Preferred pursuant hereto. This corporation shall not, however, \par be required to pay any tax which may be payable in respect of any transfer \par involved in the issue and delivery of Common Stock in a name other than \par that in which the Series A Preferred, Series B Preferred or Series C \par Preferred so converted was registered, and no such issue or delivery shall \par be made unless and until the person requesting such issue has paid to this \par corporation the amount of any such tax payable by this corporation.\par \par

4. Voting Rights.\par \par

4.1 Voting Rights Generally. Except as otherwise provided herein or \par required by law, each holder of shares of Preferred Stock shall be entitled \par to the number of votes equal to the whole number of shares of Common Stock \par into which such holder's shares of Preferred Stock could be converted on \par the record date for the vote or consent of shareholders, voting together as \par a single class. Such holders of Preferred Stock shall have voting rights \par and powers equal to the voting rights and powers of the Common Stock, and \par shall be entitled to notice of any shareholders' meeting in accordance with \par the Bylaws of this corporation and shall vote with holders of the Common \par Stock upon any matters submitted to a vote of shareholders, except those \par matters required by law to be submitted to a class vote and except as \par otherwise provided in Section 7.\par \par

4.2 Election of Directors. The number of directors of this \par corporation shall be set in accordance with this corporation's Bylaws. For \par so long as 680,000 shares of Series C Preferred are outstanding, the \par holders of the Series C Preferred shall be entitled, voting separately as a \par class, to elect two directors of this corporation at each annual election \par of directors. All remaining directors of this corporation shall be elected \par by the holders of Common Stock and the Preferred Stock, voting together as \par

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a class. In the case of any vacancy (other than a vacancy caused by removal by vote of the shareholders in accordance with applicable law) in the office of a director occurring among the directors elected by the holders of a class of stock (if any) pursuant to this Section 4.2, the remaining directors so elected by that class may, by affirmative vote of a majority thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of a majority of the shares of that class), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class of stock (if any) or by any directors so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class of stock entitled to elect such director or directors, given either at a special meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders, and any vacancy thereby created may be filled by the holders of that class of stock represented at a meeting or pursuant to written consent.

5. Series A Pre-Emptive Right.

5.1 Grant. This corporation hereby grants to each holder of shares of Series A Preferred Stock the preemptive right to purchase, on the same terms and conditions and for the same price as the New Securities (as defined below) are issued to other persons by this corporation, that portion of any New Securities which is equal to the product obtained by multiplying (i) the total number of New Securities to be issued by (ii) the quotient obtained by dividing (x) the total number of shares of Series A Preferred Stock held of record by the shareholder by (y) the total number of shares of Common Stock and Preferred Stock of this corporation then outstanding. For purposes of calculating the portion of the New Securities which may be purchased by the holders of shares of Series A Preferred Stock under this Section 5, it shall be assumed that all outstanding shares of Preferred Stock have been converted into Common Stock of this corporation. However, no actual conversion of Series A Preferred Stock to Common Stock shall occur except in accordance with Section 3.

5.2 Notice. This corporation shall give to each holder of shares of Series A Preferred Stock written notice of the proposed sale and issuance of any New Securities, which written notice shall contain the terms of such proposed sale and issuance in reasonable detail. This corporation may deliver such notice to the shareholder either (a) at least 60 days prior to the first date on which such New Securities are proposed to be sold and issued to any third party or (b) not more than thirty (30) days after the date on which this corporation closes the last sale of the New Securities to any third party. If this corporation elects to deliver the notice after its sale of the New Securities to any third party, this corporation shall insure that the agreements with such third parties confirm this corporation's right to sell the New Securities to the holders of shares of Series A Preferred Stock under this Section 5 and to sell such New Securities to such holders free of any preemptive rights of such parties. Each shareholder shall have the right to exercise the right granted under this Section 5 by giving written notice thereof to this corporation within 20 days after this corporation's delivery of the notice, specifying the amount of New Securities which the shareholder desires to purchase. In the event the shareholder does not give notice of exercise within such 20-day period, this corporation may sell and issue the New Securities without regard to the shareholder's rights under this Section 5; provided that the failure of the shareholder to exercise the right to purchase with respect to any particular sale and issuance of New Securities shall not affect the shareholder's right to purchase New Securities in any subsequent sale and

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issuance by this corporation.\par

\par

5.3 New Securities. The term "New Securities" as used in this \par Section 5 means any shares of Common Stock or any rights, options, warrants \par or other securities exercisable or exchangeable for or convertible into \par shares of Common Stock which this corporation intends to offer, sell or \par issue after the date of first issuance of any shares of Series A Preferred \par Stock, except for such securities which are:\par

\par

(a) exchanged for the securities of another corporation or \par other business entity as a result of a merger or consolidation whereby this \par corporation or any wholly-owned subsidiary of this corporation is the \par surviving corporation; \par

\par

(b) issued to another corporation or other business entity in \par exchange for all or substantially all of the assets of such corporation or \par entity;\par

\par

(c) issued to the shareholders of another corporation or the \par equity participants in another business entity in exchange for eighty \par percent (80%) or more of the outstanding equity securities of such \par corporation or entity;\par

\par

(d) securities representing or convertible into or exercisable \par for shares of Common Stock issued to fulfill any obligation of this \par corporation under any existing or future stock option, warrant or bonus or \par other incentive arrangement or plan for the benefit of the employees, \par consultants or directors of this corporation implemented for the purpose of \par inducing them to join, remain with or assist this corporation or its Board \par of Directors or any securities issued in satisfaction of such obligations; \par

\par

(e) shares subject to the Corporation's sale and issuance of \par any shares of capital stock or other securities in an underwritten initial \par public offering registered under the Securities Act of 1933, as amended, \par and realizes aggregate proceeds of not less than \$25,000,000;\par

\par

(f) warrants and options to purchase shares of Common Stock of \par this corporation issued in connection with any transaction the principal \par purposes of which is (i) the borrowing of funds in exchange for its \par issuance of non-convertible promissory notes or similar instruments, (ii) \par the leasing of equipment or acquisition of equipment, goods or services, or \par (iii) any other financing transaction in which this corporation does not \par issue any securities, other than such warrants and options, which are \par exchangeable for or convertible into equity securities; or\par

\par

(g) issued upon the exercise of any conversion, warrant or \par option rights whether presently or hereafter outstanding.\par

\par

This corporation may impose any conditions on any sale and issuance of \par New Securities to which the right granted by Section 5.1 above applies \par which this corporation reasonably believes are necessary to assure \par compliance with applicable federal and state securities laws, including, \par without limitation, requiring that all purchasers and offerees of the New \par Securities be "accredited investors" (as defined in Regulation D \par promulgated under the Securities Act).\par

\par

5.4 Limitation. Notwithstanding anything in these Articles of \par Incorporation to the contrary, no holder of shares of Series A Preferred \par Stock shall have a preemptive right to participate in any sale and issuance \par of any New Securities by this corporation if: (a) this corporation's sale \par and issuance of the New Securities to the shareholder would not comply with \par all applicable federal and state securities laws, other than as a result of \par

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a voluntary act by this corporation which can be brought into compliance \par without undue expense to this corporation; or (b) the shareholder fails to \par comply with any terms and conditions of its participation which are \par reasonably imposed by this corporation and which apply generally to all \par persons participating in the sale and issuance of such New Securities.\par \par

5.5 Termination. The pre-emptive right granted under this Section 5 \par shall terminate on the effective date of the first to occur of the \par following:\par \par

(a) the effective date of any offering by this corporation of \par its equity securities to the public pursuant to an effective registration \par statement under the Securities Act in which the aggregate price paid by the \par public for the shares shall be at least Twenty-Five Million Dollars \par (\$25,000,000); provided that such an offering shall not include an offering \par of this corporation's equity securities made in connection with a business \par acquisition or combination or an employee benefit plan;\par \par

(b) the closing of the sale of all or substantially all of the \par assets and business of this corporation in substantially a single \par transaction; provided that the transfer of all or any part of the assets of \par this corporation to another corporation in which this corporation owns, \par immediately after such transfer, eighty percent (80%) or more of the \par outstanding voting securities of such other corporation shall not be \par considered a transaction described in this clause (b);\par \par

(c) the consummation of the merger or consolidation of this \par corporation with and into another corporation or another reorganization \par transaction as a result of which this corporation is not the surviving \par corporation; provided that the merger or consolidation of this corporation \par with or into another corporation primarily for purposes of the re-\par domiciling of this corporation in another state and immediately after which \par the shareholders of this corporation own eighty percent (80%) or more of \par the outstanding voting securities of the surviving corporation shall not be \par considered a transaction described in this clause (c); and\par \par

(d) the acquisition of any voting securities of this \par corporation by any person (as that term is used for purposes of Section \par 13(d) or Section 14(d) of the Exchange Act), immediately after which such \par person has beneficial ownership (within the meaning of Rule 13d-3 \par promulgated under the Exchange Act) of more than fifty percent (50%) of the \par combined voting power of this corporation's then outstanding voting \par securities.\par \par

6. Protective Provisions.\par \par

6.1 Except as otherwise required by law, this corporation shall not, \par without the vote or written consent by the holders of at least a majority \par of the outstanding shares of any series of Preferred Stock, take any action \par that alters or changes the rights, preferences or privileges of such series \par of Preferred Stock or increases the authorized number of shares of such \par series of Preferred Stock.\par \par

6.2 Except as otherwise required by law, so long as 680,000 shares of \par Series C Preferred are outstanding, subject to equitable adjustment for any \par stock splits, stock dividends or the like, this corporation shall not, \par without first obtaining the approval (by vote or written consent, as \par provided by law) of the holders of at least a majority of the outstanding \par shares of Series C Preferred, do any of the following:\par \par

(a) redeem or repurchase any outstanding shares of Common Stock \par or Preferred Stock, or securities convertible or exchangeable into, or \par

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exercisable for, Common Stock or Preferred Stock, other than (i) pursuant \par to agreements between this corporation and any of its employees providing \par this corporation with the right of such repurchase at original cost upon \par any termination of employment or (ii) the redemption of the Series C \par Preferred pursuant to Section 7 of this Article III.\par \par

(b) authorize, create or issue any new or existing shares of \par any class or classes or series of capital stock having any preference or \par priority as to dividends or amounts distributable upon dissolution, \par liquidation or winding up of this corporation superior to or on a parity \par with any such preference or priority of the Series C Preferred, or \par authorize or issue any shares of stock of any class or any bonds, \par debentures, notes or other obligations convertible into or exercisable or \par exchangeable for, or having option rights to purchase, any shares of stock \par of this corporation having any preference or priority as to dividends or \par amounts distributable upon dissolution, liquidation or winding up of this \par corporation superior to or on a parity with any such preference or priority \par of the Series C Preferred;\par \par

(c) reclassify any Common Stock into shares having any \par preference or priority as to dividends or amounts distributable upon \par dissolution, liquidation or winding up of this corporation superior to or \par on a parity with any such preference or priority of the Preferred Stock; \par \par

(d) amend or repeal any provision of, or add any provision to, \par this corporation's Amended and Restated Articles of Incorporation or \par Bylaws; \par \par

(e) effect any Liquidating Event or Change of Control;\par \par

(f) dissolve or liquidate this corporation pursuant to Section 7 \par of the Bankruptcy Code; \par \par

(g) increase or decrease the authorized number of directors \par constituting the Board of Directors or changing the requirements for a \par director; or\par \par

(h) declare a dividend or extraordinary dividend with regard to \par any security.\par \par

7. Redemption.\par \par

7.1 Redemption Rights Generally. On July 31, 2005 (the "First \par Redemption Date"), upon the consent of the holders of 66 2/3% of the then \par outstanding Series C Preferred (the "Requesting Investors"), this \par corporation shall redeem, in the manner and with the effect provided in \par Sections 7.2 through 7.4, (i) 33 1/3% of the shares of the Series C \par Preferred which shall then be outstanding; (ii) on July 31, 2006 (the \par "Second Redemption Date"), 50% of the shares of the Series C Preferred \par which shall then be outstanding; and (iii) on July 31, 2007 (the "Third \par Redemption Date"), 100% of the shares of the Series C Preferred which \par shall then be outstanding. Each of the First Redemption Date, the Second \par Redemption Date and the Third Redemption Date is hereinafter referred to as \par the "Redemption Date".\par \par

7.2 Redemption Price. The Series C Preferred to be redeemed on the \par Redemption Date shall be redeemed by paying for each share (the "Redemption \par Price") the sum of (a) \$17.75 and (b) an amount equal to all dividends \par accrued but unpaid thereon up to the Redemption Date and all other \par dividends declared but unpaid thereon. \par \par

7.3 Redemption Procedures. Not less than 60 days before the First \par

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Redemption Date, the Requesting Investors shall give written notice to this \par corporation of their desire for this corporation to redeem the Series C \par Preferred. Not less than 30 days before the Redemption Date, written \par notice shall be made to the holders of record of the Series C Preferred \par Stock to be redeemed, specifying the number of shares to be redeemed, the \par Redemption Price and the place and date of such redemption, which date \par shall not be a day on which banks in California are required or authorized \par to close. If such notice of redemption shall have been duly given and if \par on or before such Redemption Date the funds necessary for redemption shall \par have been set aside so as to be and continue to be available therefor, then \par notwithstanding that any certificate for shares of Series C Preferred to be \par redeemed shall not have been surrendered for cancellation, after the close \par of business on such Redemption Date, the shares so called for redemption \par shall no longer be deemed outstanding, the dividends thereon shall cease to \par accrue, and all rights with respect to such shares shall forthwith after \par the close of business on the Redemption Date, cease, except only the right \par of the holders thereof to receive, upon presentation of the certificate \par representing shares so called for redemption, the Redemption Price \par therefor, without interest thereon.\par \par

7.4 Redeemed Shares to be Retired. Any shares of Series C Preferred \par redeemed pursuant to this Section 6 shall be permanently retired and shall \par not under any circumstances be reissued; and this corporation may from time \par to time take such appropriate corporate action as may be necessary to \par reduce the number of authorized shares of Series C Preferred accordingly. \par \par

8. Notices. Any notice required by the provisions of these Amended \par and Restated Articles of Incorporation, except as otherwise specifically \par provided herein, to be given to the holders of shares of Series A \par Preferred, Series B Preferred or Series C Preferred shall be in writing and \par may be delivered by personal service or sent by telecopier, e-mail, \par telegraph or cable or sent by first class mail, return receipt requested, \par with postage thereon fully prepaid. All such communications shall be \par addressed to each holder of record at its address appearing on the books of \par this corporation. If sent by telecopier, e-mail, telegraph or cable, a \par confirming copy of such notice shall be contemporaneously sent by mail (in \par the manner provided above) to the holders. Service of any such \par communication made only by mail shall be deemed complete on the date of \par actual delivery as shown by the addressee's delivery receipt or at the \par expiration of the third (3rd) business day after the date of mailing, \par whichever is earlier in time.\par

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1. The liability of the directors of this corporation for monetary \par damages shall be eliminated to the fullest extent permissible under \par California law.\par

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\pard\qc V\par

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2. This corporation is authorized to provide indemnification of \par agents (as defined in Section 317 of the California Corporations Code) \par through bylaw provisions, agreements with agents, vote of shareholders or \par disinterested directors or otherwise, in excess of the indemnification \par otherwise permitted by Section 317 of the California Corporations Code, \par subject only to the applicable limits set forth in Section 204 of the \par California Corporations Code with respect to actions for breach of duty to \par the corporation and its shareholders.\par

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3. The foregoing amendment and restatement of these Articles of \par Incorporation has been duly approved by the Board of Directors.\par

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4. The foregoing amendment and restatement of these Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of this corporation is 1,162,487 shares of Common Stock, 100,000 shares of Series A Preferred Stock, 139,000 shares of Series B Preferred Stock and zero shares of Series C Preferred Stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was (a) more than 50% of the outstanding shares of Common Stock, Series A Preferred Stock and Series B Preferred Stock voting together, (b) more than 50% of the outstanding shares of Common Stock voting as a class and (c) more than 50% of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock voting together as a class.

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

DATE: November 15, 2001

/s/Daniel P. McGuire

Daniel P. McGuire, President

/s/Stephen J. Golden

Stephen J. Golden, Secretary

\pard\qc METALCLAD CORPORATION

PRESS RELEASE

December 14, 2001

FOR IMMEDIATE RELEASE

METALCLAD ANNOUNCES PLANS FOR THE FUTURE AND STRATEGIC INVESTMENTS

Newport Beach, California, Metalclad Corporation (NASDAQ: MTLCL), announced today its plan for moving forward.

Since receiving a \$16 million cash payment from Mexico in settlement of the NAFTA litigation, the Company has explored several strategic directions and concluded the most promising avenue for creating value is to merge with a fast growing company in need of capital and a publicly traded stock.

Metalclad finds itself in the enviable position of having an established, profitable subsidiary; significant cash reserves; and an institutional investor base that would be very supportive of a merger with a company poised for significant growth and profitability. Moreover, the Company has involved major individual shareholders in the decision-making process and has won their support for a proper and well-conceived merger.

Many opportunities for a merger were explored in anticipation of payment from Mexico, and there are several being looked at currently. No definitive time frame for concluding a merger can be made. The Company is in a position to move quickly provided the appropriate candidate is identified.

In order to enhance cash returns prior to selecting the most ideal merger candidate available, the Company has made two small placements of capital.

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The Company has made a loan in the amount of \$1,250,000 to Blake Capital \par Partners, an affiliate of Wayne M. Mills, the largest single shareholder of \par the Company, of Edina, Minnesota. The loan bears interest at 6% per annum \par for a period of six months with a default rate of 12% thereafter. The loan \par is secured by a pledge of 500,000 shares of stock in Metalclad Corporation \par owned by Mills and Blake. \par

\par

The Company has participated to the extent of \$1 million in a private \par placement of securities in a company known as Catalytic Solutions, Inc. \par ("CSI"), a private company based in Oxnard, California (www.catsolns.com). \par The offering was handled by JP Morgan and Hambrecht & Quist and consists of \par a preferred stock offering convertible into common stock of CSI. CSI is a \par rapidly growing private company that has developed a less expensive \par catalytic converter for automobiles.\par

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The Company will be filing a report with the SEC on Form 8-K in the next \par few days more fully detailing the transactions with CSI and Blake. Both of \par these opportunities came through substantial shareholder affiliates of the \par Company.\par

\par

Because of the prominent role played by Anthony C. Dabbene these past six \par years and because of the importance of the role he is expected to play in \par the Company's merger plans he has been promoted and will hereafter hold the \par titles and perform the duties of Executive Vice President, in addition to \par his current role as Chief Financial Officer.\par

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For additional information contact: Grant S. Kesler, President\par
Anthony C. Dabbene, CFO\par
Metalclad Corporation \par
(949) 719-1234\par

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Statements in this release that are not strictly historical are "forward-\par looking" statements which should be considered subject to the many \par uncertainties that exist in the Company's operations and business \par environment. These uncertainties, which include economic and currency \par conditions, market demand and pricing, competitive and cost factors, and \par the like, are included in this release.\par