



**THE UNITED STATES  
CORPORATION  
COMPANY**

**F970000006340**

ACCOUNT NO. : 072100000032

REFERENCE : 614884 5011226

AUTHORIZATION : *Patricia Piquito*

COST LIMIT : \$ 175.00

**FILED**  
97 DEC -2 PM 10:36  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ORDER DATE : November 26, 1997

ORDER TIME : 10:54 AM

ORDER NO. : 614884-020

CUSTOMER NO: 5011226

*Merger*

CUSTOMER: Ms. Elaine Trench  
Gray Harris & Robinson  
S.e. Bank Building, Suite 1200  
201 E. Pine Street  
Orlando, FL 32801

**100002361041--2**

\*\*\*PLS FILE SECOND\*\*\*

ARTICLES OF MERGER

HQ QIRELESS, INC., A FLORIDA  
CORPORATION

INTO

H.Q. WIRELESS, INC., A  
DELAWARE CORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX - TWO - CERTIFIED COPY

CONTACT PERSON:

Carina E. Dunlap

Name	12/3/97
Availability	
Location	
Examiner	EXAMINER'S INITIALS:
Updater	<i>POOK</i>
Update	
Verifier	<i>POOK</i>
Acknowledgement	<i>POOK</i>
W.P. Verifier	<i>POOK</i>

**RECEIVED**  
97 DEC -2 PM 12:16  
DIVISION OF CORPORATION

F9700000634C

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

HQ WIRELESS, INC., a Florida corporation P97000018669

INTO

**H.Q. WIRELESS OF DELAWARE, INC.,** a Delaware corporation,  
F97000006340

File date: December 2, 1997

Corporate Specialist: Annette Hogan

Account number: 072100000032

Account charged: 175.00

ARTICLES OF MERGER  
OF  
H. Q. WIRELESS, INC., a Delaware corporation  
AND  
HQ WIRELESS, INC., a Florida corporation

FILED  
97 DEC -2 PM 12:36  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to § 607.1101 of the Florida General Corporation Act, H. Q. WIRELESS, INC., a Delaware corporation, and HQ WIRELESS, INC., a Florida corporation, adopt the following Articles of Merger:

ARTICLE I

H. Q. WIRELESS, INC. (hereinafter referred to as "H. Q. Delaware") is a corporation of the state of Delaware, the laws of which permit a merger of a corporation of that jurisdiction with a corporation of another jurisdiction. HQ WIRELESS, INC. (hereinafter referred to as "HQ Florida") is a corporation of the state of Florida and as the owner of all of the outstanding shares of Common Stock of H. Q. Delaware, hereby merges itself into H. Q. Delaware (also referred to herein as the "surviving corporation").

ARTICLE II

The Articles of Incorporation of H. Q. Delaware shall continue as the Articles of Incorporation of the surviving corporation.

ARTICLE III

The Plan and Agreement of Merger of these corporations attached to these Articles was adopted by the shareholders and directors of their respective corporations on December 1, 1997.

ARTICLE IV

This merger shall be effective upon filing.

ARTICLE V

The Plan of Merger is attached hereto as Exhibit "A" and incorporated herein by reference.

Dated this 1st day of ~~November~~ <sup>December</sup>, 1997.

H. Q. WIRELESS, INC.,  
a Delaware corporation

By: Ronald R. Carney  
Name: RONALD R. CARNEY  
Title: PRESIDENT / CEO

HQ WIRELESS, INC.,  
a Florida corporation

By: Ronald R. Carney  
Name: RONALD R. CARNEY  
Title: PRESIDENT / CEO

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EXHIBIT A

PLAN AND AGREEMENT OF MERGER  
OF  
HQ WIRELESS, INC., (a Florida corporation)  
AND  
H. Q. WIRELESS, INC., (a Delaware corporation)

PLAN AND AGREEMENT OF MERGER entered into on December 1, 1997 by **HQ WIRELESS, INC.**, a business corporation of the State of Florida ("HQ Florida"), and approved by resolution adopted by its Board of Directors on said date, and entered into on December 1, 1997 by **H. Q. WIRELESS, INC.**, a business corporation of the State of Delaware ("H. Q. Delaware"), and approved by resolution adopted by its Board of Directors on said date.

WHEREAS HQ Florida, is a business corporation of the State of Florida with its principal office therein located at 1900 S. Harbor City Blvd., City of Melbourne, County of Brevard; and

WHEREAS the total number of shares of stock which HQ Florida has authority to issue is 10,000, all of which are of one class and of a par value of \$1.00 each; and

WHEREAS H. Q. Delaware is a business corporation of the State of Delaware with its registered office therein located at 1013 Centre Road, City of Wilmington, County of New Castle; and

WHEREAS the total number of shares of stock which H. Q. Delaware has authority to issue is 8,086,735 shares of Common Stock with a par value of \$0.001 per share and 3,170,000 shares of Series A Convertible Preferred Stock with a par value of \$0.01 per share; and

WHEREAS the Florida Business Corporation Act permits a merger of a business corporation of the State of Florida with and into a business corporation of another jurisdiction; and

WHEREAS the General Corporation Law of the State of Delaware permits the merger of a business corporation of another jurisdiction with and into a business corporation of the State of Delaware; and

WHEREAS HQ Florida and H. Q. Delaware and the respective Boards of Directors thereof deem it advisable and to the advantage, welfare, and best interests of said corporations and their respective stockholders to merge HQ Florida with and into H. Q. Delaware pursuant to the provisions of the Florida Business Corporation Act and pursuant to the provisions of the General Corporation Law of the State of Delaware upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and of the mutual agreement of the parties hereto, being thereunto duly entered into by HQ Florida and approved by a resolution adopted by its Board of Directors and Shareholders and being thereunto duly entered into by H. Q. Delaware and approved by a resolution adopted by its Board of Directors, the Plan and Agreement of Merger and the terms and conditions thereof and the mode of carrying the same into effect, together with any provisions required or permitted to be set forth therein, are hereby determined and agreed upon as hereinafter in this Plan and Agreement set forth.

1. HQ Florida and H. Q. Delaware shall, pursuant to the provisions of the Florida Business Corporation Act and the provisions of the General Corporation Law of the State of Delaware, be merged with and into a single corporation, to wit, H. Q. WIRELESS, INC., a Delaware corporation, which shall be the surviving corporation from and after the effective time of the merger, and which is sometimes hereinafter referred to as the "surviving corporation", and which shall continue to exist as said surviving corporation under its present name pursuant to the provisions of the General Corporation Law of the State of Delaware. The separate existence of HQ Florida, which is sometimes hereinafter referred to as the "terminating corporation", shall cease at said effective time in accordance with the provisions of the Florida Business Corporation Act.

2. Annexed hereto and made a part hereof is a copy of the Certificate of Incorporation of the surviving corporation as the same shall be in force and effect at the effective time in the State of Delaware of the merger herein provided for; and said Certificate of Incorporation shall continue to be the Certificate of Incorporation of said surviving corporation until amended and changed pursuant to the provisions of the General Corporation Law of the State of Delaware.

3. The present bylaws of the surviving corporation will be the bylaws of said surviving corporation and will continue in full force and effect until changed, altered or amended as therein provided and in the manner prescribed by the provisions of the General Corporation Law of the State of Delaware.

4. The directors and officers in office of the surviving corporation at the effective time of the merger shall be the members of the first Board of Directors and the first officers of the surviving corporation, all of whom shall hold their directorships and offices until the election and qualification of their respective successors or until their tenure is otherwise terminated in accordance with the bylaws of the surviving corporation.

5. Each issued share of the terminating corporation shall, at the effective time of the merger, be converted into 1,099.796 shares of the surviving corporation. The issued shares of the surviving corporation shall not be cancelled.

6. In the event that this Plan and Agreement of Merger shall have been fully approved and adopted upon behalf of the terminating corporation in accordance with the provisions of the Florida Business Corporation Act and upon behalf of the surviving corporation in accordance with the provisions of the General Corporation Law of the State of Delaware, the said corporations agree that they will cause to be executed and filed and recorded any document or documents prescribed by the laws of the State of Florida and by the laws of the State of Delaware, and that they will cause to be performed all necessary acts within the State of Florida and the State of Delaware and elsewhere to effectuate the merger herein provided for.

7. The Board of Directors and the proper officers of the terminating corporation and of the surviving corporation are hereby authorized, empowered, and directed to do any and all acts and things, and to make, execute, deliver, file, and record any and all instruments, papers, and documents which shall be or become necessary, proper, or convenient to carry out or put into effect any of the provisions of this Plan and Agreement of Merger or of the merger herein provided for.

IN WITNESS WHEREOF, this Plan and Agreement of Merger is hereby executed upon behalf of each of the constituent corporations parties thereto.

Dated: ~~November~~ <sup>December 1</sup> \_\_, 1997.

H. Q. WIRELESS, INC.,  
a Delaware corporation

By: Ronald R. Carney  
Name: RONALD R. Carney  
Title: PRESIDENT / CEO

HQ WIRELESS, INC.,  
a Florida corporation

By: Ronald R. Carney  
Name: RONALD R. CARNEY  
Title: PRESIDENT / CEO

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CERTIFICATE OF INCORPORATION  
OF  
H. Q. WIRELESS, INC.

FIRST. The name of this Corporation shall be: H. Q. WIRELESS, INC.

SECOND. Its registered office in the state of Delaware is to be located at 1013 Centre Road, in the City of Wilmington, 19805, County of New Castle and its registered agent at such address is CORPORATION SERVICE COMPANY.

THIRD. The purpose or purposes of the Corporation shall be:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of stock which this Corporation is authorized to issue is:

8,086,735 shares of Common Stock, with a par value of \$0.001 per share (the "Common Stock"); and

3,170,000 shares of Series A Convertible Preferred Stock, with a par value of \$0.01 per share (the "Preferred Stock").

The number of shares of authorized Common Stock of the Corporation may be increased or decreased (but not below the number then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class notwithstanding the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

A statement of the powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions of the Common Stock and the Preferred Stock is as follows:

1. Number of Shares. The series of Preferred Stock designated and known as "Series A Convertible Preferred Stock" shall consist of 3,170,000 shares.

2. Voting.

2A. General. Except as may be otherwise provided in these terms of the Series A Convertible Preferred Stock or by law, the Series A Convertible Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Series A Convertible Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal



the number of shares of Common Stock (including fractions of a share) into which each share of Series A Convertible Preferred Stock is then convertible.

2B. Board Size. So long as at least 150,000 shares of Series A Convertible Preferred Stock are outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of at least two-thirds of the then outstanding shares of Series A Convertible Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, increase the maximum number of directors constituting the Board of Directors to a number in excess of seven.

2C. Board Seats. So long as at least 150,000 shares of Series A Convertible Preferred Stock are outstanding the holders of the Series A Convertible Preferred Stock, voting as a separate series, shall be entitled to elect four directors of the Corporation. The holders of the Common Stock, voting as a separate class, shall be entitled to elect three directors of the Corporation. At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of Series A Convertible Preferred Stock then outstanding shall constitute a quorum of the Series A Convertible Preferred Stock for the election of directors to be elected solely by the holders of the Series A Convertible Preferred Stock. A vacancy in any directorship elected by the holders of the Series A Convertible Preferred Stock shall be filled only by vote or written consent of the holders of the Series A Convertible Preferred Stock, and a vacancy in any directorship elected by the holders of the Common Stock shall be filled only by vote or written consent of the holders of the Common Stock.

3. Dividends. The holders of the Series A Convertible Preferred Stock shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors, quarterly dividends at the rate per annum of \$.08 per share (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not earned or declared, and shall be cumulative.

4. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Series A Convertible Preferred Stock shall be entitled, before any distribution or payment is made upon any stock ranking on liquidation junior to the Series A Convertible Preferred Stock, to be paid an amount equal to the greater of (i) \$1.00 per share plus (a) in the case of each share, an amount equal to all Accruing Dividends unpaid thereon (whether or not declared) and any other dividends declared but unpaid thereon, computed to the date payment thereof is made available, plus (b) in the case of each share, an amount that, when added to all dividends with respect to such share described in clause (a) hereof, would yield a 21.9% compounded annual rate of return on such share calculated from the date of purchase of such share through the date of such liquidation, dissolution or winding up, or (ii) such amount per share as would have been payable had each such share been converted to Common Stock

pursuant to paragraph 6 immediately prior to such liquidation, dissolution or winding up, and the holders of Series A Convertible Preferred Stock shall not be entitled to any further payment, such amount payable with respect to one share of Series A Convertible Preferred Stock being sometimes referred to as the "Liquidation Preference Payment" and with respect to all shares of Series A Convertible Preferred Stock being sometimes referred to as the "Liquidation Preference Payments." If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series A Convertible Preferred Stock shall be insufficient to permit payment to the holders of Series A Convertible Preferred Stock of the amount distributable as aforesaid, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series A Convertible Preferred Stock. Upon any such liquidation, dissolution or winding up of the Corporation, after the holders of Series A Convertible Preferred Stock shall have been paid in full the amounts to which they shall be entitled, the remaining net assets of the Corporation may be distributed to the holders of stock ranking on liquidation junior to the Series A Convertible Preferred Stock. Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the Liquidation Preference Payments and the place where said Liquidation Preference Payments shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex, not less than 20 days prior to the payment date stated therein, to the holders of record of Series A Convertible Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation. The following shall without limitation, be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of the provisions of this paragraph 4: (i) the consolidation or merger of the Corporation into or with any other entity or entities which results in the exchange of outstanding shares of the Corporation for securities or other consideration issued or paid or caused to be issued or paid by any such entity or affiliate thereof (other than a merger to reincorporate the Corporation in a different jurisdiction) and the sale, lease, abandonment, transfer or other disposition by the Corporation of all or substantially all its assets, in which the stockholders of the Corporation immediately prior to such consolidation, merger, sale or other disposition own less than 51% of the outstanding voting stock of the surviving corporation or (ii) the sale or exclusive license of all or a substantial portion of the intellectual property assets of the Corporation that does not include the sale of the Corporation's business as a going concern or the continued employment of the Corporation's employees by the acquiring entity. For purposes hereof, the Common Stock shall rank on liquidation junior to the Series A Convertible Preferred Stock.

Payments made to the holders of the Series A Convertible Preferred Stock pursuant to this Section 4 shall be made in cash; provided, that in the event of any reorganization, merger or other business combination which is desired to be treated by the Board of Directors as a "pooling of interests" for accounting purposes under Accounting Principles Board Opinion No. 16, each holder of Series A Convertible Preferred Stock shall receive payments in the same form of consideration as is payable with respect to the Common Stock. If allowed under such Accounting

Principles Board Opinion, such consideration shall be reallocated among the holders of Series A Convertible Preferred Stock in a manner to give economic effect to the intent and purpose of this Section 4.

5. — Restrictions. At any time when at least 150,000 shares of Series A Convertible Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Certificate of Incorporation, and in addition to any other vote required by law or the Certificate of Incorporation, without the approval of the holders of at least two-thirds of the then outstanding shares of Series A Convertible Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series (subject to the fiduciary duties, if any, of controlling persons of such stockholders who are members of the Corporation's Board of Directors), the Corporation will not:

5A. Authorize or issue any equity securities other than the shares of Common Stock excepted under paragraph 6E hereof;

5B. Consent to any liquidation, dissolution or winding up of the Corporation or consolidate or merge into or with any other entity or entities or sell, lease, abandon, transfer or otherwise dispose of all or any substantial portion of its assets or enter into any other transaction or series of transactions in which more than 50% of the voting power of the Corporation is transferred;

5C. Amend, alter or repeal its Certificate of Incorporation or By-laws if the effect would be detrimental or adverse in any manner with respect to the rights of the holders of the Series A Convertible Preferred Stock;

5D. Purchase or set aside any sums for the purchase of, or pay any dividend or make any distribution on, any shares of stock other than the Series A Convertible Preferred Stock, except for dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and except for the purchase of shares of Common Stock from former employees of the Corporation who acquired such shares directly from the Corporation, if each such purchase is made pursuant to contractual rights held by the Corporation after November 26, 1997 relating to the termination of employment of such former employee and the purchase price does not exceed the original issue price paid by such former employee to the Corporation for such shares;

5E. Redeem or otherwise acquire any shares of Series A Convertible Preferred Stock except as expressly authorized in paragraph 7 hereof or pursuant to a purchase offer made pro rata to all holders of the shares of Series A Convertible Preferred Stock on the basis of the aggregate number of outstanding shares of Series A Convertible Preferred Stock then held by each such holder; or

5F. Incur indebtedness of any kind in excess of \$500,000.

6. Conversions. The holders of shares of Series A Convertible Preferred Stock shall have the following conversion rights:

6A. Right to Convert. Subject to the terms and conditions of this paragraph 6, the holder of any share or shares of Series A Convertible Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series A Convertible Preferred Stock (except that upon any liquidation of the Corporation the right of conversion shall terminate at the close of business on the business day fixed for payment of the amount distributable on the Series A Convertible Preferred Stock) into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series A Convertible Preferred Stock so to be converted by \$1.00 and (ii) dividing the result by the conversion price of \$1.00 per share or, in case an adjustment of such price has taken place pursuant to the further provisions of this paragraph 6, then by the conversion price as last adjusted and in effect at the date any share or shares of Series A Convertible Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, being referred to as the "Conversion Price"). Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of shares of Series A Convertible Preferred Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Series A Convertible Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued.

6B. Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in subparagraph 6A and surrender of the certificate or certificates for the share or shares of Series A Convertible Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series A Convertible Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Series A Convertible Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

6C. Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of Series A Convertible Preferred Stock into

Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. At the time of each conversion, the Corporation shall pay in cash an amount equal to all dividends, excluding Accruing Dividends, accrued and unpaid on the shares of Series A Convertible Preferred Stock surrendered for conversion to the date upon which such conversion is deemed to take place as provided in subparagraph 6B. In case the number of shares of Series A Convertible Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 6A exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series A Convertible Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this subparagraph 6C, be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Series A Convertible Preferred Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Corporation.

6D. Adjustment of Price Upon Issuance of Common Stock. Except as provided in subparagraph 6E, if and whenever the Corporation shall issue or sell, or is, in accordance with subparagraphs 6D(1) through 6D(7), deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Conversion Price shall be reduced to the price determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) the total number of shares of Common Stock outstanding immediately after such issue or sale.

For purposes of this subparagraph 6D, the following subparagraphs 6D(1) to 6D(7) shall also be applicable:

6D(1) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any received or receivable by the Corporation as consideration for the granting of

such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph 6D(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

6D(2) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in subparagraph 6D(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price have been or are to be made pursuant to other provisions of this subparagraph 6D, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

6D(3) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in subparagraph 6D(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph 6D(1) or 6D(2), or the rate at which Convertible Securities referred to in subparagraph 6D(1) or 6D(2) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Price in effect at the time of such event shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold, but only if as a result of such adjustment the Conversion Price then in effect hereunder is thereby reduced; and on the termination of any such Option or any such right to convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

6D(4) Stock Dividends. In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation (other than the Common Stock) payable in Common Stock, Options or Convertible Securities, then any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

6D(5) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

6D(6) Record Date. In case the Corporation shall take a record of the holders of its 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.

6D(7) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this subparagraph 6D.

6E. Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price in the case of the issuance from and after the date of filing of these terms of the Series A Convertible Preferred Stock of up to an aggregate of 1,617,347 shares (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F) of Common Stock (i) to lenders and other creditors upon the exercise of warrants issued to such lenders and creditors and (ii) to directors, officers, employees or consultants of the Corporation in connection with their service as directors of the Corporation, their employment by the Corporation or their retention as consultants by the Corporation, plus such number of shares of Common Stock which are repurchased by the Corporation from such persons after such date pursuant to contractual rights held by the Corporation and at repurchase prices not exceeding the respective original purchase prices paid by such persons to the Corporation therefor.

6F. Subdivision or Combination of Common Stock. In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased. In the case of any such subdivision, no further adjustment shall be made pursuant to subparagraph 6D(4) by reason thereof.

6G. Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made



whereby each holder of a share or shares of Series A Convertible Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Series A Convertible Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

6H. Notice of Adjustment. Upon any adjustment of the Conversion Price, then and in each such case the Corporation shall give written notice thereof, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of shares of Series A Convertible Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Conversion Price resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

6I. Other Notices. In case at any time:

(1) the Corporation shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(2) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;

(3) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into another entity or entities, or a sale, lease, abandonment, transfer or other disposition of all or substantially all its assets; or

(4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, the Corporation shall give, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of any shares of Series A Convertible Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 20 days' prior written notice of the date on which the books of the Corporation shall

close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up and (b) in the case of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, at least 20 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, as the case may be.

6J. Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Series A Convertible Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Series A Convertible Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the Conversion Price in effect at the time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed. The Corporation will not take any action which results in any adjustment of the Conversion Price if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Series A Convertible Preferred Stock would exceed the total number of shares of Common Stock then authorized by the Certificate of Incorporation.

6K. No Reissuance of Series A Convertible Preferred Stock. Shares of Series A Convertible Preferred Stock which are converted into shares of Common Stock as provided herein shall not be reissued.

6L. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Series A Convertible Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series A Convertible Preferred Stock which is being converted.

6M. Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Series A Convertible Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series A Convertible Preferred Stock in any manner which interferes with the timely conversion of such Series A Convertible Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

6N. Definition of Common Stock. As used in this paragraph 6, the term "Common Stock" shall mean the Corporation's authorized Common Stock, par value \$0.001 per share, as constituted on the date of filing of these terms of the Series A Convertible Preferred Stock, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall not be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Common Stock receivable upon conversion of shares of Series A Convertible Preferred Stock shall include only shares designated as Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets provided for in subparagraph 6G.

6O. Mandatory Conversion. If at any time (a) the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock in which (i) the aggregate price paid for such shares by the public shall be at least \$10,000,000 and (ii) the price paid by the public for such shares shall be at least \$3.71 per share (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F) or (b) the holders of two-thirds of the then outstanding shares of Series A Convertible Preferred Stock shall vote at a meeting or by written consent to convert all outstanding shares of Series A Convertible Preferred Stock to shares of Common Stock, then effective upon the closing of the sale of such shares by the Corporation pursuant to such public offering or upon the effective date for such conversion specified in such vote or written consent (or if no effective date is so specified, upon the date of such vote or written consent), as the case may be, all outstanding shares of Series A Convertible Preferred Stock shall automatically convert to shares of Common Stock on the basis set forth in this paragraph 6. Holders of shares of Series A Convertible Preferred Stock so converted may deliver to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to such holders) during its usual business hours, the certificate or certificates for the shares so converted. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares to which such holder may be entitled pursuant to subparagraph 6C. Until such time as a holder of shares of Series A Convertible Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.

7. Redemption. The shares of Series A Convertible Preferred Stock shall be redeemed as follows:

7A. Mandatory Redemption. On December 1, 2003, and on each of the next two anniversaries thereafter (the "Redemption Dates," and each a "Redemption Date"), the Corporation shall redeem any outstanding shares of Series A Convertible Preferred Stock according to the percentages listed below:

<u>Date of Redemption</u>	<u>Percentage of Shares of Series A Convertible Preferred Stock then Outstanding to be Redeemed</u>
December 1, 2003	33-1/3% of all the shares of Series A Convertible Preferred Stock outstanding on December 1, 2003
December 1, 2004	50% of all the shares of Series A Convertible Preferred Stock outstanding on December 1, 2004
December 1, 2005	100% of all the shares of Series A Convertible Preferred Stock outstanding on December 1, 2005

7B. Redemption Price and Payment. The shares of Series A Convertible Preferred Stock to be redeemed on any Redemption Date shall be redeemed by paying for each share in cash an amount equal to \$1.00 per share plus, in the case of each share, an amount equal to all dividends, excluding Accruing Dividends, declared but unpaid thereon, computed to such Redemption Date, such amount being referred to as the "Redemption Price." Such payment shall be made in full on the applicable Redemption Date to the holders entitled thereto.

7C. Redemption Mechanics. At least 20 but not more than 30 days prior to each Redemption Date, written notice (the "Redemption Notice") shall be given by the Corporation by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, to each holder of record (at the close of business on the business day next preceding the day on which the Redemption Notice is given) of shares of Series A Convertible Preferred Stock notifying such holder of the redemption and specifying the Redemption Price, such Redemption Date, the number of shares of Series A Convertible Preferred Stock to be redeemed from such holder (computed on a pro rata basis in accordance with the number of such shares held by all holders thereof) and the place where said Redemption Price shall be payable.

The Redemption Notice shall be addressed to each holder at his address as shown by the records of the Corporation. From and after the close of business on a Redemption Date, unless there shall have been a default in the payment of the Redemption Price, all rights of holders of shares of Series A Convertible Preferred Stock (except the right to receive the Redemption Price) shall cease with respect to the shares to be redeemed on such Redemption Date, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Convertible Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series A Convertible Preferred Stock to be redeemed on such Redemption Date, the holders of such shares shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable to them if the full number of shares to be redeemed on such Redemption Date were actually redeemed. The shares of Series A Convertible Preferred Stock required to be redeemed but not so redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series A Convertible Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above.

7D. Redeemed or Otherwise Acquired Shares to be Retired. Any shares of Series A Convertible Preferred Stock redeemed pursuant to this paragraph 7 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Series A Convertible Preferred Stock.

8. Amendments. No provision of these terms of the Series A Convertible Preferred Stock may be amended, modified or waived without the written consent or affirmative vote of the holders of at least two-thirds of the then outstanding shares of Series A Convertible Preferred Stock.

FIFTH: The name and address of the incorporator are as follows:

William A. Grimm  
Gray, Harris & Robinson, P.A.  
201 E. Pine Street, Suite 1200  
Orlando, Florida 32801

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (7) of

subsection (b) of Section 102 of the General Corporation Law of the state of Delaware, as the same may be amended and supplemented.

EIGHTH: The Corporation shall, to the fullest extent permitted by the provisions of Section 145 of the General Corporation Laws of the state of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such person.

NINTH: Unless and except to the extent the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

IN WITNESS WHEREOF, the undersigned, being the incorporator hereinbefore named, has executed, signed and acknowledged this certificate of incorporation this 25th day of November, 1997.



William A. Grimm  
Incorporator

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CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION  
BEFORE PAYMENT OF ANY PART  
OF THE CAPITAL  
OF  
H. Q. WIRELESS, INC.

It is hereby certified that:

1. The name of the corporation is H. Q. WIRELESS, INC. (hereinafter called the "Corporation")

2. The Corporation has not received any payment for any of its stock.

3. The certificate of incorporation of the corporation is hereby amended as follows:

Section 2A. General is hereby amended to read as follows:

2A. General. Except as may be otherwise provided in these terms of the Series A Convertible Preferred Stock or by law, the Series A Convertible Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation, including but not limited to actions amending the certificate of incorporation to increase the number of shares of authorized common stock. Each share of Series A Convertible Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock (including fractions of a share) into which each share of Series A Convertible Preferred Stock is then convertible.

Section 5D is hereby amended to read as follows:

5D. Purchase or set aside any sums for the purchase of, or pay any dividend or make any distribution on, any shares of stock other than the Series A Convertible Preferred Stock, except for dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and except for (i) the purchase of shares of Common Stock from former employees of the Corporation who acquired such shares directly from the Corporation after December 1, 1997, if each such purchase is made pursuant to contractual rights held by the Corporation relating to the termination of employment of such former employee and the purchase price does not exceed the original issue price paid by such former employee to the Corporation for such shares, and (ii) the purchase of shares of Common Stock pursuant to Stock Restriction Agreements between the Corporation and each of Ronald Carney, Thomas Gorsuch and Carlo Amalfitano;

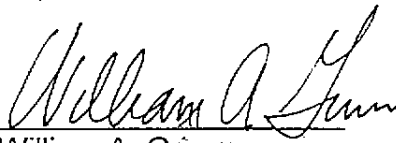
Section 7A. Mandatory Redemption is hereby amended to read as follows:

7A. Mandatory Redemption. On December 2, 2003, and on each of the next two anniversaries thereafter (the "Redemption Dates," and each a "Redemption Date"), the Corporation shall redeem any outstanding shares of Series A Convertible Preferred Stock according to the percentages listed below:

<u>Date of Redemption</u>	<u>Percentage of Shares of Series A Convertible Preferred Stock then Outstanding to be Redeemed</u>
December 2, 2003	33-1/3% of all the shares of Series A Convertible Preferred Stock outstanding on December 1, 2003
December 2, 2004	50% of all the shares of Series A Convertible Preferred Stock outstanding on December 1, 2004
December 2, 2005	100% of all the shares of Series A Convertible Preferred Stock outstanding on December 1, 2005

4. The amendments of the certificate of incorporation herein certified were duly adopted, pursuant to the provisions of Section 241 of the General Corporation Law of the State of Delaware, by the sole incorporator, no directors having been named in the certificate of incorporation and no director having been elected.

Signed this 1st day of December, 1997.

  
William A. Grimm  
Incorporator