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

AMENDED AND RESTATED ARTICLES OF INCORPORATION

DEC 20 2004

OF

ALTIERRE CORPORATION

Kevin Shelley
KEVIN SHELLEY, Secretary of State

The undersigned, Sunit Saxena and Anurag Goel, certify that:

1. They are the duly elected and acting President and Chief Executive Officer, and Secretary, respectively, of Altierre Corporation, a California corporation
2. The Articles of Incorporation of this Corporation are amended and restated to read in full as follows:

ARTICLE I

The name of the Corporation is Altierre Corporation (hereinafter, the "Corporation").

ARTICLE II

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

ARTICLE III

A. This Corporation is authorized to issue two classes of stock to be designated respectively Preferred Stock ("Preferred Stock") and Common Stock ("Common Stock"). The total number of shares of capital stock that the Corporation is authorized to issue is sixty-eight million seventy-one thousand four hundred twenty-nine (68,071,429). The total number of shares of Preferred Stock this Corporation shall have authority to issue is nineteen million three hundred fifty-seven thousand one hundred forty-three (19,357,143). The total number of shares of Common Stock this Corporation shall have authority to issue is forty-eight million seven hundred fourteen thousand two hundred eighty-six (48,714,286).

B. The Preferred Stock shall be divided into one or more series. The first series shall consist of nineteen million three hundred fifty-seven thousand one hundred forty-three (19,357,143) shares and is designated "Series A Preferred Stock."

C. The powers, preferences, rights, restrictions, and other matters relating to the Series A Preferred Stock are as follows:

1. Dividends.

(a) The holders of the Series A Preferred Stock shall be entitled to receive dividends at the rate of \$0.0413 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like with respect to such shares (each, a "Stock Reclassification"))

per annum, payable out of funds legally available therefor. Such dividends shall be payable only when, as, and if declared by the Board of Directors and shall be noncumulative.

No right shall accrue to holders of shares of Series A Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior year, nor shall any unpaid dividend bear or accrue any interest.

(b) No dividends or other distributions shall be made with respect to the Common Stock in any fiscal year, other than dividends payable solely in Common Stock, unless dividends have been paid to or declared and set apart for payment upon all shares of Series A Preferred Stock at the above rate for such period, and unless all other declared dividends have been paid to or declared and set apart upon all shares of Series A Preferred Stock during that fiscal year. In any given fiscal year, after the holders of Series A Preferred Stock have received their dividend preference as set forth above, any dividends declared by the Board of Directors out of funds legally available therefor shall be distributed pro rata among all outstanding shares of Series A Preferred Stock and Common Stock on an as-converted basis.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, an amount per share equal to the sum of (i) \$1.0332 for each outstanding share of Series A Preferred Stock (as adjusted for any Stock Reclassification with respect to such shares) and (ii) an amount equal to all declared but unpaid dividends on such shares for each share of Series A Preferred Stock then held by them. If, upon the occurrence of such liquidation, dissolution or winding up of the Corporation, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) After payment of the liquidation preference set forth in Section C.2(a) above, the remaining assets and funds of the Corporation shall be distributed pro rata among the holders of the Common Stock and Series A Preferred Stock (on an as-converted basis); provided, however, that once the aggregate per share consideration distributed to the holders of Series A Preferred Stock pursuant to Section C.2(a) and this Section C.2(b) equals \$2.583 (as adjusted for any Stock Reclassification with respect to such shares), then the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall thereafter be distributed ratably among the holders of the Common Stock (with no further payments to the holders of the Series A Preferred Stock by reason of their ownership thereof).

(c) For purposes of this Section C.2, any of the following shall be treated as a liquidation, dissolution or winding up of the Corporation and shall entitle the holders of Series A Preferred Stock and Common Stock to receive at the closing in cash, securities or other property (valued as provided in Section C.2(d) hereof) amounts as specified in Sections C.2(a) and C.2(b) hereof: (i) any acquisition of the Corporation by means of merger or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for or converted into securities or other consideration issued, or caused to be issued, by the acquiring corporation or its direct or indirect subsidiary (other than a mere reincorporation transaction) and in which the holders of the Corporation's outstanding voting stock immediately prior to such acquisition own, immediately after such acquisition, securities representing less than fifty percent (50%) of the voting power of the Corporation or other entity surviving such acquisition or (ii) a sale of all or substantially all of the assets of the Corporation.

(d) Whenever the distribution provided for in this Section C.2 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by at least 75% of the Board of Directors.

(e) Notwithstanding subsections 2(a) and (b) above, solely for purposes of determining the portion of the assets and funds to be distributed under this Section C.2 that each holder of shares of Series A Preferred Stock is entitled to receive with respect to a liquidation, dissolution or winding up of the Corporation, if any amount of the assets and funds to be distributed is distributed to the shareholders after the date of the consummation of a liquidation, dissolution or winding up (a "Closing"), such as earnout payments, escrow amounts or other contingent payments (such amounts, the "Heldback Funds"), then on each date that all or a portion of the Heldback Funds (the "Distributed Funds") is paid to the shareholders (each, a "Payment Date"), each holder of shares of Series A Preferred Stock outstanding immediately prior to the Closing shall be entitled to receive on such Payment Date, an amount equal to the greater of: (A) the amount of the Distributed Funds to which such shareholder would have been entitled (after taking into account the operation of this subsection 2(e) with respect to the Series A Preferred Stock and treating the distributions made upon such Payment Date and all prior Payment Dates as having been made simultaneously upon the Closing) pursuant to subsections 2(a) and (b) above, and (B) the amount of the Distributed Funds to which such shareholder would have been entitled if all shares of Series A Preferred Stock had converted to Common Stock under Section C.4 below immediately prior to the Closing; provided, however, that the aggregate amount received by such shareholder (at the Closing of the liquidation, dissolution or winding up together with all Payment Dates) shall not exceed the greater of (i) the total amount a holder of a share of Series A Preferred Stock would be entitled to receive pursuant to subsections 2(a) and (b), and (ii) the total amount a share of Series A Preferred Stock would be entitled to receive as if such share of Series A Preferred Stock shall have been converted to Common Stock under Section C.4 below immediately prior to the Closing. If holders of shares of Series A Preferred Stock are treated as if they had converted such shares into Common Stock pursuant to this subsection 2(e), then such holders shall not be entitled to receive any distributions payable to a holder of Series A Preferred Stock pursuant to subsections 2(a) and (b) above, and shall instead be entitled only to receive any amounts payable to holders of Common Stock pursuant to subsection 2(b).

3. Voting Rights; Directors.

(a) Each holder of shares of the Series A Preferred Stock shall be entitled to the number of votes equal to the greatest number of shares of Common Stock into which such shares of Series A Preferred Stock are then convertible and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation. In all cases, any fractional share, determined on an aggregate conversion basis, shall be rounded to the nearest whole share. Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

(b) There shall be a total of five (5) directors, elected as follows:

(i) The holders of Common Stock, voting together as a single class, shall be entitled to elect two (2) members of the Board of Directors.

(ii) The holders of Series A Preferred Stock, voting together as a single class, shall be entitled to elect two (2) members of the Board of Directors.

(iii) The remaining director shall be elected by the holders of the outstanding shares of Common Stock and Series A Preferred Stock, voting together as a single class.

(c) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of Common Stock pursuant to Section C.3(b)(i) hereof, the holders of Common Stock, voting together as a single class, shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of Series A Preferred Stock pursuant to Section C.3(b)(ii) hereof, the holders of Series A Preferred Stock, voting together as a single class, shall elect a successor to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of Common Stock and Series A Preferred Stock pursuant to Section C.3(b)(iii) hereof, the holders of Common Stock and Series A Preferred Stock, voting together as a single class, shall elect a successor to hold the office for the unexpired term of the director or directors whose place or places shall be vacant.

(d) Any director who shall have been elected by the holders of Common Stock pursuant to Section C.3(b)(i) hereof, or any director so elected as provided in Section C.3(c) hereof, may be removed during the aforesaid term of office without cause by the affirmative vote of the holders of Common Stock and subject to the provisions of California Corporations Code Section 303. Any director who shall have been elected by the holders of Series A Preferred Stock pursuant to Section C.3(b)(ii) hereof, or any director so elected as provided in Section C.3(c) hereof, may be removed during the aforesaid term of office without cause by the affirmative vote of the holders of Series A Preferred and subject to the provisions of California Corporations Code Section 303. Any director who shall have been elected by the holders of Series A Preferred Stock and Common Stock, voting together as a single class,

pursuant to Section C.3(b)(iii) hereof, or any director so elected as provided in Section C.3(c) hereof, may be removed during the aforesaid term of office without cause by the affirmative vote of the holders of Series A Preferred Stock and Common Stock, voting together as a single class, and subject to the provisions of California Corporations Code Section 303.

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

(a) Right To Convert. Subject to subsection (d) of this Section C.4, each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Series A Preferred Stock into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Issue Price (as defined below) by the Series A Conversion Price (as defined below), in effect on the date the certificate is surrendered for conversion. The Original Series A Issue Price shall be \$0.5166 (as adjusted for any Stock Reclassification). The initial Series A Conversion Price per share shall be the Original Series A Issue Price; provided, however, that the Series A Conversion Price shall be subject to adjustment as set forth in subsection (d) below; provided further, that if, on or before June 21, 2005, (i) the Corporation has not issued and sold a total of at least 15,485,868 shares of Series A Preferred Stock at a purchase price of at least \$0.5166 per share and (ii) the Corporation and Kroger Company (or an affiliate thereof, "Kroger") have not entered into a memorandum of understanding, letter of intent or similar agreement requiring (subject to those parties entering into related definitive agreements) Kroger to evaluate the Corporation's products and Kroger to apply sufficient resources to evaluate those products in the field, then on June 21, 2005, the Series A Conversion Price will be adjusted to equal 0.6 times the Series A Conversion Price in effect immediately prior to such adjustment.

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Series A Conversion Price then in effect at such time immediately upon the earlier of (i) the date specified by vote or written consent or agreement of holders of at least a majority of the shares of the Series A Preferred Stock then outstanding, voting together as a single class, or (ii) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act") (other than a registration relating solely to a transaction under Rule 145 under such Securities Act (or any successor thereto) or to an employee benefit plan of the Corporation) with gross proceeds to the Corporation (before payment of underwriters' discounts and commissions) of at least \$75,000,000 and at a price of at least \$1.55 (as adjusted for any Stock Reclassification).

(c) Mechanics of Conversion.

(i) Before any holder of Series A Preferred Stock shall be entitled voluntarily to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Section C.4(b) hereof) and shall state therein

the number of shares to be converted and the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities. If the conversion occurs through the vote of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding, such conversion shall be deemed to have been made at the close of business on the day written notice of such election has been received by the Corporation or such later date as set forth in such written notice, and the person or persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. Until certificates for such shares of the Series A Preferred Stock which has been converted have been delivered to the Corporation for exchange for certificates representing such Common Stock, such certificates shall be deemed to represent the shares of Common Stock into which such Series A Preferred Stock has been converted.

(d) Adjustments to Series A Conversion Price for Certain Diluting Issues.

(i) Special Definitions. For purposes of this Section C.4(d), the following definitions apply:

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

(B) "Series A Issue Date" shall mean the date on which the first share of Series A Preferred Stock was issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, outstanding shares or other outstanding securities convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section C.4(d)(iii) hereof, deemed to be issued) by the Corporation after the Series A Issue Date, *other than* shares of Common Stock issued or issuable:

- (1) upon conversion of shares of Series A Preferred Stock;
- (2) to employees, officers, directors, contractors, consultants or advisors of the Corporation under incentive agreements, stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other arrangements, as approved by the Board of Directors or an authorized committee thereof; provided, that the aggregate number of such shares of Common Stock then issued (or deemed to be issued pursuant to Section C.4(d)(iii) hereof) and outstanding does not exceed nine million three hundred fifty-seven thousand one hundred forty-three (9,357,143) shares less any shares issuable or issued upon exercise of any Options or Convertible Securities outstanding as of the date of filing of these Amended and Restated Articles of Incorporation with the California Secretary of State and any shares issuable upon the conversion or exercise thereof (as adjusted for any Stock Reclassification and to be calculated net of any repurchases of such shares by the Company and net of any such expired or terminated options, warrants or rights);
- (3) upon exercise of any Options or Convertible Securities outstanding as of the date of filing of these Amended and Restated Articles of Incorporation with the California Secretary of State, and any securities issuable upon the conversion or exercise thereof;
- (4) in connection with a Stock Reclassification pursuant to Section C.4(e) hereof;
- (5) as a dividend or distribution on Series A Preferred Stock;
- (6) Common Stock issued or issuable pursuant to the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act;
- (7) to parties who are either (A) actual or potential suppliers, customers or strategic partners investing in connection with a commercial relationship with the Corporation, or (B) providing the Corporation with equipment leases, real property leases, loans, credit lines, guarantees of indebtedness, cash price reductions or entering into similar transactions with the Corporation, in each case as approved by the Board of Directors and the holders of a majority of the then-outstanding shares of Series A Preferred Stock;
- (8) pursuant to the acquisition of another corporation or entity pursuant to a consolidation, merger, purchase of all or substantially all of the assets of such entity or other reorganization (other than a mere reincorporation transaction) in which the Corporation acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such entity or fifty percent (50%) or more of the equity ownership in such entity; provided, that such transaction or series of transactions is approved unanimously by the Board of Directors; or

(9) in a transaction or a series of related transactions (i) that would otherwise result in an adjustment of the Series A Conversion Price pursuant to Section C.4(d)(iv) below and (ii) that is approved by (y) the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock and (z) the Board of Directors.

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Series A Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section C.4(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series A Conversion Price in effect on the date of, and immediately prior to, such issue.

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

(A) no further adjustments to the Series A Conversion Price shall be made upon the subsequent issue of Options or Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series A Conversion Price shall affect Common Stock previously issued upon conversion of the Series A Preferred Stock);

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities that shall not have been exercised, the Series A Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(2) in the case of Options for Convertible Securities only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section C.4(d) hereof) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

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

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immediately prior to such issuance shall be calculated as of the date of conversion on a fully-diluted basis, as if all shares of Series A Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding Options had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible), but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Series A Preferred Stock, Convertible Securities or outstanding Options, solely as a result of the adjustment of the Series A Conversion Price (or other conversion ratios) resulting from the issuance of Additional Shares of Common Stock causing such adjustment.

(v) Determination of Consideration. For purposes of this Section C.4(d), the consideration received by the Corporation for the issuance of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property. Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;

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

(3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section C.4(d)(iii) hereof, relating to Options and Convertible Securities, shall be determined by dividing:

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issuance of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

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

(e) Adjustments to Conversion Price for Stock Dividends and for Combinations or Subdivisions of Common Stock In the event that this Corporation at any time or from time to time after the Series A Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Series A Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that this Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(f) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section C.4(e) hereof or a merger or other reorganization referred to in Section C.2(c) hereof), the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock that the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock immediately before that change.

(g) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all of the provisions of this Section C.4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

(h) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section C.4, the Corporation, at its expense and upon the request of any holder of Series A Preferred Stock, shall promptly

compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer or other executive officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Series A Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred Stock.

(i) Notices of Record Date. In the event that the Corporation shall propose at any time: (A) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (B) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (C) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (D) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Series A Preferred Stock:

(i) at least ten (10) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (C) and (D) in Section C.4(i) above; and

(ii) in the case of the matters referred to in (C) and (D) in Section C.4(i) above, at least ten (10) days' prior written notice of the anticipated date when the same shall take place (and specifying the anticipated date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

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

(k) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of the Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its

authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation.

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

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

5. Restrictions and Limitations.

(a) So long as any shares of Series A Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of a majority of the then-outstanding shares of Series A Preferred Stock, voting together as a single class:

(i) Effect any amendment of or change to any provision of the Corporation's Articles of Incorporation or Bylaws that alters or changes the rights, preferences, privileges or restrictions of the Series A Preferred Stock (other than the creation of a new series of Preferred Stock that is junior to the Series A Preferred Stock in rights, preferences, privileges or restrictions);

(ii) Any reclassification of outstanding shares or securities into shares or securities having rights, preferences or privileges senior to or on a parity with the rights, preferences, privileges or restrictions of the Series A Preferred Stock;

(iii) Authorize shares of any class of stock having rights, preferences, privileges or restrictions senior to or on a parity with the Series A Preferred Stock;

(iv) Increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock or Common Stock;

(v) Consummate any merger or consolidation of the Corporation with or into one or more other entities in which the shareholders of the Corporation immediately prior to the consummation of such transaction hold, immediately after the consummation of such transaction, stock representing less than a majority of the voting power of the outstanding stock of the surviving entity (other than for the purpose of changing the Corporation's domicile and other than pursuant to a sale of all or substantially all of the Corporation's assets);

Stock shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series A Preferred Stock designated for redemption in the Redemption Notice as holders of Series A Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, 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 Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, those funds that are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series A Preferred Stock. The shares of Series A Preferred Stock not redeemed on a particular Redemption Date shall remain outstanding and entitled to all of the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed.

(d) On or prior to each Redemption Date, the Corporation shall deposit the Redemption Price of all shares of Series A Preferred Stock designated for redemption in the Redemption Notice, and not yet redeemed or converted, with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to publish the notice of redemption thereof and pay the Redemption Price for such shares to their respective holders on or after the Redemption Date, upon receipt of notification from the Corporation that such holder has surrendered his, her or its share certificate to the Corporation pursuant to subsection (3)(b) above. As of the date of such deposit (even if prior to the Redemption Date), the deposit shall constitute full payment of the shares to their holders, and from and after the date of the deposit the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the rights to receive from the bank or trust corporation payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor, and the right to convert such shares as provided in Article IV(B)(4) hereof. Such instructions shall also provide that any moneys deposited by the Corporation pursuant to this subsection (3)(d) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Article IV(B)(4) hereof prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this subsection (3)(d) remaining unclaimed at the

expiration of two (2) years following the Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a duly adopted resolution of its Board of Directors.

7. No Reissuance of Series A Preferred Stock. No share or shares of Series A Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

ARTICLE IV

A. Limitation on Directors' Liability. The liability of directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

B. Indemnification of Corporate Agents. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its shareholders through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors, or otherwise, to the fullest extent permissible under California law. If, after the effective date of this Article IV, California law is amended in a manner that permits a company to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article IV to "California law" shall to that extent be deemed to refer to California law as so amended.

C. Repeal or Modification. Any amendment, repeal or modification of any provision of this Article IV shall not adversely affect any right or protection of an agent of the Corporation existing at the time of such amendment, repeal or modification.

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

2. The foregoing amendment and restatement of the Corporation's Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares of Common Stock of the Corporation entitled to vote with respect to the foregoing amendment is 13,179,117. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%) of the outstanding shares of Common Stock, voting together as a single class.

[Remainder of this page intentionally left blank.]

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

Dated: December 17, 2004

By


Sunit Saxena
President and Chief Executive Officer

By


Anurag Goel
Secretary