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**FILED**

In the Office of the Secretary of State  
of the State of California

JAN 05 2007

C 2056981  
**AMENDED AND RESTATED**

**ARTICLES OF INCORPORATION**

**OF**

*Bill Jones*  
**BILL JONES, Secretary of State**

**ARCOT SYSTEMS, INC.**

In accordance with Sections 902 and 903 of the California Corporations Code, the undersigned, Chester Silvestri and Warren T. Lazarow, hereby certify that:

**ONE:** They are the duly elected and acting President and Secretary, respectively, of Arcot Systems, Inc., a California corporation (the "Corporation").

**TWO:** The Articles of Incorporation of the Corporation shall be amended and restated to read in their entirety as follows:

**I.**

The name of this Corporation is Arcot Systems, Inc.

**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.

**III.**

This Corporation is authorized to issue two classes of stock, designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which this Corporation is authorized to issue is one hundred ten million two hundred fifty-four thousand one hundred sixty-one (110,254,161) shares, without par value, of which seventy million (70,000,000) shares are Common Stock and forty million two hundred fifty-four thousand one hundred sixty-one (40,254,161) shares are Preferred Stock, of which nine million (9,000,000) shares are designated Series A Preferred Stock, nine million twenty-six thousand nine hundred sixty-four (9,026,964) shares are designated Series B Preferred Stock, nine million three hundred thirty thousand (9,330,000) shares are designated Series C Preferred Stock and twelve million eight hundred ninety-seven thousand one hundred ninety-seven (12,897,197) shares are designated Series D Preferred Stock. Except as set forth in Article IV hereof relating to the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock, the Board of Directors is authorized to designate additional series of Preferred Stock and to fix the number of shares of any series of Preferred Stock and to determine or alter the rights, preferences, privileges,

and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series of Preferred Stock, to increase or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series.

#### IV.

The rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock and Preferred Stock are as follows:

##### A. Dividends.

1. When and as declared by the Corporation's Board of Directors, the holders of outstanding Series A Preferred Stock ("Series A Preferred"), Series B Preferred Stock ("Series B Preferred"), Series C Preferred Stock ("Series C Preferred") and Series D Preferred Stock ("Series D Preferred") shall be entitled to receive in any fiscal year on a *pari passu* basis, out of any assets at the time legally available therefor, dividends in cash at the rate of \$0.0133, \$0.0356, \$0.1072 and \$0.2568 per share per annum, respectively (each as adjusted for any stock dividends, combination, splits, recapitalizations and the like with respect to such shares), before any dividend is paid on Common Stock. Dividends may be declared and paid upon Common Stock in any fiscal year of the Corporation only if dividends shall have been paid to or declared and set apart upon all shares of Preferred Stock at such annual rate for such fiscal year of the Corporation. After such dividends are declared and paid upon the shares of Preferred Stock, dividends may be declared and paid on the Common Stock if at the same time equivalent dividends are declared and paid to holders of Preferred Stock (such dividends to be paid as determined on an as converted basis for the Preferred Stock).

2. The right to such dividends on Preferred Stock and Common Stock shall not be cumulative and no right shall accrue to holders of Preferred Stock or Common Stock by reason of the fact that dividends on said shares are not declared in any prior year, nor shall any undeclared or unpaid dividend bear or accrue interest.

##### B. Liquidation Preference.

1. In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall be entitled to receive on a *pari passu* basis and 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 of such stock, an amount per share equal to the sum of \$0.1665, \$0.445, \$1.34 and \$3.21, respectively (as adjusted for any stock dividends, combination, splits, recapitalization and the like with respect to such shares), for each share of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred, respectively, then held by them, and, in addition, an amount equal to all declared but unpaid dividends on the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred, respectively. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall be insufficient to

permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred in proportion to the full aforesaid preferential amounts to which each such holder is entitled. In lieu of receiving the above liquidation preference, prior to the time of any such liquidation, dissolution or winding up of the Corporation, the holders of Preferred Stock may convert their shares of Preferred Stock into shares of Common Stock, in accordance with Section D below, and receive the assets of the Corporation on a pro rata basis with the holders of Common Stock.

2. After payment or setting apart of payment has been made to the holders of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred of the full amounts to which they shall be entitled as aforesaid, the holders of Common Stock shall be entitled to receive pro rata the remaining assets of the Corporation.

3. A consolidation or merger of the Corporation with or into any other corporation or corporations or any other corporate reorganization, in which the shareholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Corporation's equity securities immediately after such consolidation, merger or reorganization, or a sale of all or substantially all of the assets of the Corporation, or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, shall be deemed to be a liquidation, dissolution or winding up within the meaning of this Article IV.B.

4. Any securities to be delivered to the holders of the Preferred Stock and/or Common Stock pursuant to this Article IV.B. shall be valued as follows:

(a) Securities not subject to investment letter or other similar restrictions on free marketability:

(i) If traded on a securities exchange or the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) business days prior to the closing;

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) business days prior to the closing; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined in good faith by the Board of Directors and the holders of at least two-thirds (2/3) of the Preferred Stock of this Corporation.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount, as determined in good faith by the Board of Directors, from the market value determined as above in 4(a)(i), (ii) or (iii) to reflect the approximate fair market value thereof.

C. Voting Rights.

1. General. The holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each such share of Preferred Stock is convertible on the record date for the vote or consent of shareholders and shall have voting rights and powers equal to the voting rights and powers of the holders of the Common Stock. The holder of each share of Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation and shall vote with the holders of the Common Stock upon any matter submitted to a vote of shareholders, except those matters required by law to be submitted to a class vote or as otherwise provided in Sections H or I of this Article IV. Fractional votes shall not, however, be permitted, and any fractional voting rights resulting from application of the above voting formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

2. Election of Directors. At each election of the Corporation's directors, so long as twenty-five percent (25%) or more of the Preferred Stock remains outstanding, the holders of the Series A Preferred (voting as a single class) will elect one director, the holders of the Series B Preferred Stock (voting as a single class) will elect one director and the holders of Common Stock (voting as a single class) will elect one director, and any remaining directors will be elected by all of the holders of Common and Preferred Stock, voting together as a single class. If at any time less than twenty-five percent (25%) of the Preferred Stock remains outstanding, all of the directors will be elected by all of the holders of Common and Preferred Stock, voting together as a single class. Notwithstanding any Bylaw provisions to the contrary, the shareholders entitled to elect a particular director shall be entitled to remove such director or to fill a vacancy in the seat formerly held by such director, all in accordance with the applicable provisions under California law.

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

1. Right to Convert. Each share of each series of Preferred Stock shall be convertible, at the option of the holder thereof, at any time into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Issuance Price (as defined below) by the Conversion Price (as defined below) in effect at the time of conversion. The Issuance Price for the Series A Preferred, the Series B Preferred, the Series C Preferred and the Series D Preferred shall be \$0.1665, \$0.445, \$1.34 and \$3.21, respectively. The Conversion Price for the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall initially be \$0.1665, \$0.445, \$1.34 and \$3.21, respectively, subject to adjustment as provided below. Such initial Conversion Prices shall be adjusted as hereinafter provided.

2. Automatic Conversion. Each share of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall automatically be converted into shares of Common Stock at the respective Conversion Prices at the time in effect for such series of Preferred Stock immediately upon the earlier of (i) an underwritten public offering of the Corporation's shares pursuant to a registration statement under the Securities Act of 1933, as amended (the "Act"), which results in the Corporation's Common Stock being listed for trading on a national securities exchange

or the Nasdaq National Market; or (ii) the date upon which the Corporation obtains the vote or written consent of at least two-thirds (2/3) of the then outstanding shares of the Preferred Stock, voting together as a class, to such conversion.

3. Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section D.2 above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of automatic conversion, on the date of closing of the underwritten offering or at the close of business on the date of a vote or written consent to conversion, whichever may be applicable, 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.

4. Fractional Shares. In lieu of any fractional shares to which the holder of Preferred Stock would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Preferred Stock as determined by the Board of Directors of the Corporation. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

E. Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances. The respective Conversion Prices of the Preferred Stock shall be subject to adjustment from time to time as follows:

1. If the Corporation shall issue, after the date upon which any shares of Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) the Conversion Price for such Series of Preferred Stock in effect immediately prior to each such issuance shall forthwith be adjusted to a new Conversion Price of

each Series of Preferred Stock equal to a fraction the numerator of which shall be the sum of (A) the number of shares of Common Stock outstanding on the Purchase Date of such series, multiplied by the Issuance Price of such series, plus (B) the aggregate consideration received by the Corporation for the total number of shares of Additional Stock so issued or sold (or deemed issued or sold); and the denominator of which shall be the sum of (A) the number of shares of Common Stock outstanding immediately prior to such issuance or sale, plus (B) the number of shares of such Additional Stock so issued or sold (or deemed issued or sold); provided, however that the Conversion Price of each Series of Preferred Stock shall at no time exceed the respective Issuance Price of such Series of Preferred Stock as adjusted for stock splits, combinations and similar acts. For the purposes of this Section E and of Section F, the number of shares of Common Stock outstanding shall be deemed to include all shares of Common Stock actually outstanding and all shares of Common Stock issuable upon exercise, conversion or exchange of all outstanding options, warrants and convertible securities.

(a) No adjustment of the Conversion Price for the applicable Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (d)(iii) and (d)(iv) below, no adjustment of such Conversion Price pursuant to this subsection E.1(a) shall have the effect of increasing the applicable Conversion Price above the applicable Conversion Price in effect immediately prior to such adjustment.

(b) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, commissions or other expenses allowed, paid or incurred by this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(c) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(d) In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection E.1 and subsection E.2:

(i) The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsection E.1, if any) received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(ii) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsection E.1.).

(iii) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the respective Conversion Prices of the applicable Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(iv) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the respective Conversion Prices of the applicable Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(v) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections E.1(d)(i) and E.1(d)(ii) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection E.1(d)(iii) or E.1(d)(iv).

2. Additional Stock. "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection E.1(d)) by this Corporation after the Purchase Date other than:

(a) Common Stock issued pursuant to a transaction described in subsection E.3 hereof; or

(b) shares of Common Stock issuable or issued to employees, consultants, directors or vendors of this Corporation or any subsidiary directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of this Corporation; or

(c) shares of Common Stock issued or issuable in a public offering before or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock or upon exercise of warrants or rights granted to underwriters in connection with such a public offering; or

(d) securities issued pursuant to the acquisition by the Corporation of another corporation by merger, or by purchase of all or substantially all of the assets of that corporation or by any other reorganization or combination approved by the Board of Directors of this Corporation; or

(e) securities issued by the Corporation pursuant to agreements to license technology approved by the Board of Directors of this Corporation; or

(f) securities issued in connection with equipment leasing or equipment financing arrangements or loan agreements approved by the Board of Directors of the Corporation; or

(g) Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and all underlying shares of Common Stock.

3. Dates. In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the respective Conversion Price of the respective Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

4. Combination. If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the respective Conversion Price for the respective Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

5. No Impairment. The Corporation will not through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in



the carrying out of all the provisions of this Section E 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 Preferred Stock against impairment. This provision shall not restrict the Corporation's right to amend its Articles of Incorporation with the requisite shareholder consent.

6. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Prices for the Preferred Stock pursuant to this Section E, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) all such adjustments and readjustments, (ii) the Conversion Prices 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 such holder's shares of Preferred Stock.

7. Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property or to receive any other right, the Corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution or right, and the amount and character of such dividend, distribution or right.

8. Notices. All notices and other communications required by the provisions of this Section E to be given to any holder of Preferred Stock shall be deemed given upon personal delivery, delivery by nationally recognized courier or five (5) business days after deposit with the United States Post Office (by first class mail, postage prepaid, receipt requested), and addressed to each holder of record at such holder's address appearing on the Corporation's books.

F. Further Adjustment of Conversion Price. The Conversion Price of each series of Preferred Stock shall also be subject to adjustment from time to time as follows:

(a) If the number of shares of Common Stock outstanding at any time after the filing of these Amended and Restated Articles of Incorporation is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split up of shares of Common Stock, then, on the date such payment is made or such change is effective, the applicable Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Preferred Stock shall be increased in proportion to such increase of outstanding shares.

(b) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the applicable Conversion Price for the Preferred Stock shall be appropriately increased so that the number of shares of Common Stock

issuable on conversion of each share of such Series shall be decreased in proportion to such decrease in outstanding shares.

(c) In case the Corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than Common Stock), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock), then, in each such case, the holders of the Preferred Stock shall, concurrent with the distribution to holders of Common Stock, receive a like distribution based upon the number of shares of Common Stock into which such Preferred Stock is then convertible.

(d) In case, at any time after the date hereof, of any capital reorganization or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in any change in the Common Stock), the shares of Preferred Stock shall, after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition such holder had converted its shares of Preferred Stock into Common Stock. The provisions of this clause (d) shall similarly apply to successive reorganizations, reclassification, consolidations, mergers, sales or other dispositions.

(e) All calculations under this Section F shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

G. Repurchase of Common Shares. Each holder of an outstanding share of Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503, and 506 of the California General Corporation Law to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees, directors or consultants upon termination of their employment, directorship or consultancy pursuant to agreements providing for the right of such repurchase between the Corporation or a subsidiary and such persons.

H. Protective Provisions. So long as any shares of Preferred Stock shall be outstanding, the Corporation shall not without first obtaining the approval of the holders of at least two-thirds (2/3) of the outstanding Preferred Stock (voting together as a class):

1. Change Rights. Amend, alter, waive or repeal any provision of the Articles of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Determination) in such a way as to adversely affect the voting powers, preferences, or other special rights or privileges, qualifications, limitations or restrictions of the Preferred Stock;

2. Change Number. Increase or decrease the authorized number of shares of Preferred Stock or Common Stock;

3. Create New Shares. Authorize, create, issue or designate, whether by reclassification or otherwise, any new class or series of stock or any other securities convertible into equity securities of the Corporation ranking on a parity with or senior to the Preferred Stock in rights of conversion, redemption, liquidation preferences, voting or dividends or any increase in the authorized or designated number of any such new class or series;

4. Employee Compensation. Increase the number of shares reserved for issuance to employees and consultants under the Corporation's current stock option plan or adopt any new employee stock option plan for the benefit of the employees of the Corporation unless all existing Board members ratify such action;

5. Reorganization. Consummate a merger, consolidation, corporate reorganization or any transaction in which all or substantially all of the assets of the Corporation are sold, or in which the Corporation's shareholders immediately prior to such transaction own immediately after such transaction less than fifty percent (50%) of the equity securities of the surviving corporation or its parent, or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed to holders who did not own any of such equity securities prior to the transaction(s);

6. Board of Directors. Increase or decrease the authorized number of directors, unless all existing Board of Directors' members ratify such action;

7. Dividends. Pay any dividends or make any distribution on the Common Stock; or

8. Redemption. Redeem or repurchase the Preferred Stock or the Common Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or a subsidiary or in exercise of the Corporation's right of first refusal upon a proposed transfer).

I. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested with the Common Stock.

V.

A. The liability of the directors of this Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

B. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through Bylaw provisions, agreements with agents, vote of shareholders or disinterested directors, or otherwise, to the fullest extent permissible under California law.

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

**THREE:** The foregoing amended and restated Articles of Incorporation has been approved by the Board of Directors of said Corporation.

**FOUR:** The foregoing amended and restated Articles of Incorporation has been duly approved by the required vote of the shareholders in accordance with Sections 902 and 903 of the California Corporations Code.

**FIVE:** The total number of outstanding shares entitled to vote with respect to the foregoing amendment and restatement was 18,270,121 shares of Common Stock, 9,000,000 shares of Series A Preferred Stock, 9,026,964 shares of Series B Preferred Stock, 9,330,000 shares of Series C Preferred Stock and 6,666,667 shares of Series D Preferred Stock. The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required, such required vote being a majority of the outstanding shares of Common Stock and two-thirds (2/3) of the outstanding shares of Preferred Stock, voting together as a class.

IN WITNESS WHEREOF, the undersigned have executed this certificate on  
January 2, 2001.

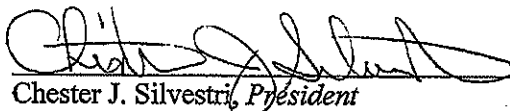


Chester J. Silvestri, *President*

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Warren T. Lazarow, *Secretary*

The undersigned further declare under penalty of perjury under the laws of the State of California that they have read the foregoing Amended and Restated Articles of Incorporation and know the contents thereof and that the statements therein are true.

Executed at Palo Alto, California, on January 2, 2001.

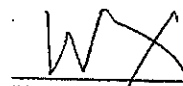


Chester J. Silvestri, *President*

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Warren T. Lazarow, *Secretary*

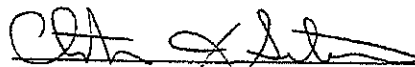
IN WITNESS WHEREOF, the undersigned have executed this certificate on  
January 2, 2001.


  
\_\_\_\_\_  
Chester J. Silvestri, *President*

  
\_\_\_\_\_  
Warren T. Lazarow, *Secretary*

The undersigned further declare under penalty of perjury under the laws of the State of California that they have read the foregoing Amended and Restated Articles of Incorporation and know the contents thereof and that the statements therein are true.

Executed at Palo Alto, California, on January 2, 2001.

  
\_\_\_\_\_  
Chester J. Silvestri, *President*

  
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Warren T. Lazarow, *Secretary*