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in the office of the Secretary of State  
of the State of California **Z**

JAN 1 1 2005 *BR*

*Kevin Shelley*  
KEVIN SHELLEY, Secretary of State

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION OF

Be Here Corporation

Stephen Von Rump certifies that:

1. He is the President and Secretary, respectively, of Be Here Corporation, a California corporation (hereinafter referred to as the "Corporation").
2. The Articles of Incorporation of this Corporation are amended and restated in their entirety to read as follows:

I.

The name of this Corporation is Be Here Corporation.

II.

The purpose of this 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.

(a) This Corporation is authorized to issue two classes of shares, to be designated, respectively, "Preferred Stock" and "Common Stock." The total number of shares which this Corporation shall have authority to issue is *twenty two million fifty thousand (22,050,000)* of which *twelve million five hundred fifty thousand (12,550,000)* shares shall be Common Stock and *nine million five hundred thousand (9,500,000)* shares shall be Preferred Stock, of which *nine million five hundred thousand (9,500,000)* shares shall be designated New Series A Preferred Stock (the "New Series A Preferred").

(b) Upon the filing of this Amended and Restated Articles of Incorporation, (i) each share of Series A Preferred Stock outstanding immediately prior to such filing shall be converted, automatically and without any action on the part of the holders thereof, into 16.282731 shares of Common Stock, (ii) each share of Series B Preferred Stock outstanding immediately prior to such filing shall be converted, automatically and without any action on the part of the holders thereof, into 11.870053 shares of Common Stock, (iii) each share of Series C Preferred Stock outstanding immediately prior to such filing shall be converted, automatically and without any action on the part of the holders thereof, into 14.1636 shares of Common Stock, (iv) each share of Series D Preferred Stock outstanding immediately prior to such filing shall be converted, automatically and without any action on the part of the holders thereof, into 9.587635 shares of Common Stock, (v) each share of Series D-1 Preferred Stock outstanding immediately prior to such filing shall be converted, automatically and without any action on the part of the holders thereof, into 853.95965 shares of Common Stock, (vi) each share of Series D-2 Preferred

Stock outstanding immediately prior to such filing shall be converted, automatically and without any action on the part of the holders thereof, into 7.1719633 shares of Common Stock and (vii) each share of Series E Preferred Stock outstanding immediately prior to such filing shall be converted, automatically and without any action on the part of the holders thereof, into 0.027318244 shares of New Series A Preferred (items (i)-(vii) above, collectively, the "Conversions"). All certificates representing shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Series D-2 Preferred Stock outstanding immediately prior to filing of this Amended and Restated Articles shall immediately after the filing of this Amended and Restated Articles of Incorporation represent a number of shares of Common Stock as provided above. All certificates representing shares of Series E Preferred Stock outstanding immediately prior to filing of this Amended and Restated Articles shall immediately after the filing of this Amended and Restated Articles of Incorporation represent a number of shares of New Series A Preferred as provided above.

(c) Upon the filing of this Amended and Restated Articles of Incorporation and immediately after giving effect to the Conversions, every 1,000 issued and outstanding shares of Common Stock of the Corporation shall be combined into one share of Common Stock.

(d) Notwithstanding the foregoing, any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series D-2 Preferred Stock and Series E Preferred Stock immediately prior to the filing of this Amended and Restated Articles of Incorporation may (but shall not be required to) surrender his, her or its stock certificate or certificates to the Corporation, and upon such surrender the Corporation will issue a certificate for the correct number of shares of Common Stock or New Series A Preferred, as applicable, to which the holder is entitled under the provisions of this Amended and Restated Articles of Incorporation.

(e) A statement of the rights, preferences, privileges and restrictions granted to or imposed on the New Series A Preferred and the holders thereof is as follows:

(1) Dividends.

(a) The holders of the New Series A Preferred shall be entitled to receive, out of any funds legally available therefore, dividends at the rate of \$0.11959 per share per annum for each share of New Series A Preferred, payable in preference and priority to any payment of any dividend on the **Common Stock**. The right to receive such dividends on the New Series A Preferred shall be cumulative and shall accrue, whether or not declared by the board of directors of this Corporation (the "**Board of Directors**"), but shall be payable only when, if and to the extent declared by the Board of Directors, or upon the occurrence of a Liquidation Event (as hereinafter defined).

(b) After payment of the dividends set forth in Section 1(a), any additional dividends declared shall be distributed among all holders of Common Stock and New Series A Preferred in proportion to the number of shares of Common Stock, or shares of Common Stock convertible upon the issuance of the New Series A Preferred, held by them.

Prior to the declaration of any dividend, the Corporation shall provide each holder of Preferred Stock with notice of the record date for the declaration of such dividend which will be paid.

(c) Unless all accrued but unpaid dividends and all declared but unpaid dividends on the New Series A Preferred shall have been paid in full, no dividend whatsoever (other than a dividend payable solely in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) shall be paid or declared, and no distribution shall be made, on any Common Stock.

(d) In the event that there shall be any accrued but unpaid and/or declared but unpaid dividends on the New Series A Preferred outstanding immediately prior to a liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (as provided in Section 2 hereof), the Corporation shall pay to each holder of New Series A Preferred in cash or shares of Common Stock valued at the then current Conversion Price (as defined in Section 3 hereof) for shares of New Series A Preferred, at each such holder's sole option, the full amount of any such dividends.

(e) In the event that there shall be any declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of the Preferred Stock (as provided in Section 3 hereof), the Corporation shall, at its option, pay in cash to each holder of Preferred Stock subject to conversion, the full amount of any such dividends or allow such dividends to be converted into Common Stock in accordance with, and pursuant to the terms specified in, Section 3 hereof.

(2) Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, (or deemed occurrence of such event pursuant to Section 2(c)) (a "**Liquidation Event**"), the holders of the New Series A Preferred 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, and irrespective of the availability of proceeds from such Liquidation Event, the amount of \$2.3918 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of New Series A Preferred then held by them plus an amount equal to all accrued but unpaid dividends on each share of New Series A Preferred paid in accordance with Section 1(d) above (the "**New Series A Liquidation Preference**"). If, upon occurrence of such event, the assets and funds thus distributed among the holders of the New Series A Preferred shall be insufficient to permit the payment to such holders of the full preferential amounts to which they respectively shall be entitled pursuant to this Section 2(a), then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the New Series A Preferred in proportion to the shares of New Series A Preferred then held by each such holder.

(b) After payment has been made to the holders of the New Series A Preferred of the entire **New Series A Liquidation Preference**, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed pro rata

among the holders of New Series A Preferred and the holders of Common Stock. For purposes of this Section 2(b) a holder's pro rata amount shall be equal to the amount obtained by multiplying the entire assets and funds of the Corporation legally available for distribution pursuant to this Section 2(b) by a fraction, the numerator of which shall be the sum of the number of shares of Common Stock then held by the holder and the number of shares of Common Stock issuable upon conversion of the shares of such **New Series A Preferred** then held by the holder, and the denominator of which shall be the sum of the total number of shares of Common Stock then outstanding and the total number of shares of Common Stock issuable upon conversion of the total number of shares of such **New Series A Preferred** then outstanding.

(c) For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include: (i) the sale of all or a Substantial Portion (as defined below) of the Corporation's assets or stock; or (ii) any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) which will result in the holders of the outstanding voting equity securities of the Corporation immediately prior to such transaction holding less than fifty percent (50%) of the voting equity securities of the surviving entity immediately following such transaction (each such event being a "**Change of Control**"). For purposes of this Section, 2 a "Substantial Portion" shall mean (a) the sale of 50% or more of the Corporation's assets or, the sale of assets that generate 50% or more of the Corporation's revenues, (b) the sale of 50% or more of the Corporation's outstanding capital stock (assuming the conversion or exercise of all issued and outstanding Common Stock equivalents) or (c) the license by the Corporation of 50% or more of its assets pursuant to a worldwide, perpetual and exclusive license.

(d) If any of the assets of this Corporation are to be distributed under this Section 2, or for any purpose, in a form other than cash, then the Board of Directors shall promptly and reasonably determine in good faith the fair market value of the assets to be distributed to the holders of Preferred Stock or Common Stock; provided, however, that, unless otherwise provided in the merger agreement, asset sale agreement or other definitive agreement in connection with a Change of Control, any securities to be distributed to the shareholders in a Liquidation Event shall be valued as follows:

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

(1) If traded on a securities exchange or the Nasdaq National Market System, the value shall be deemed to be the average of the closing prices of the securities on such exchange or automated quotation system over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) or lack of liquidity shall be to make an appropriate discount from the market value determined as above in (i) (1), (2) or (3) to reflect the approximate fair market value thereof as determined in good faith by the Board of Directors.

(iii) The Corporation shall give each holder of record of Preferred Stock written notice of a Change of Control not later than ten (10) business days after the Board of Directors approves such transaction, twenty (20) business days prior to any shareholders' meeting called to approve such transaction, or twenty (20) business days prior to the closing of such transaction, whichever is earliest. The notice shall describe the material terms and conditions of the impending transaction and the Corporation shall thereafter give such holders prompt notice of any material changes.

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

(a) Right to Convert.

Each share of New Series A Preferred 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: \$1.1959 (the "**Original Purchase Price**") by the Conversion Price, determined as hereinafter provided.

The price at which shares of Common Stock shall be deliverable upon conversion of the New Series A Preferred (the "**Conversion Price**") shall initially be \$1.1959 per share of Common Stock. Such initial Conversion Price shall be subject to adjustment as hereinafter provided.

Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price: (i) in the event of the effectiveness of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public at a price per share equal to or greater than \$5.00 and an aggregate offering price to the public of not less than \$25,000,000 (before deduction of underwriter's commissions and expenses); and (ii) at the election of the holders of a majority of the outstanding shares of New Series A Preferred, voting as a single series, for the conversion of the New Series A Preferred. In the event of an offering described in clause (i) above, the person(s) entitled to receive the Common Stock issuable upon such conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such underwritten public offering.

(b) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional share to which a holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock as determined by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same into full

shares of Common Stock, it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Secretary of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that it elects to convert the same. The Corporation shall, as soon as practicable thereafter, 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 he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into a fractional share of Common Stock, and any declared but unpaid dividends in the case of the New Series A Preferred. 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, 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. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion shall be conditioned upon the closing of such public offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to such closing.

(c) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Section 3, the following definitions shall apply:

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

(2) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock or New Series A Preferred) or other securities convertible into or exchangeable for Common Stock.

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

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 3(c)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than:

(A) shares of Common Stock issued or issuable upon conversion of shares of New Series Preferred Stock;

(B) up to 2,123,935 shares of Common Stock issued to officers, directors or employees of, or consultants to, the Corporation pursuant to a stock grant, option plan or purchase plan or other employee stock incentive program (each a "Plan" and, collectively, the "Plans") so long as any such Plan is approved by the Board of Directors;

(C) securities issued or issuable to any executive search firm, consulting, professional services or other service firm, talent agency if and to the

extent that the transaction in which such sale or grant is to be made is approved by the Board of Directors and is not primarily for the purpose of raising equity capital for the Corporation; and provided the total number of securities issued after the Original Issue Date of the New Series A Preferred to such entities or persons does not exceed one percent of the issued and outstanding securities of the Corporation (calculated on a fully diluted basis);

(D) securities issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board of Directors, and provided the total number of securities issued after the Original Issue Date of the New Series A Preferred to such entities or persons does not exceed one percent of the issued and outstanding securities of the Corporation (calculated on a fully diluted basis);

(E) securities issued or issuable pursuant to the acquisition of another corporation by this Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors;

(F) securities issued or issuable to an actual or potential business partner to foster strategic business objectives approved by the Board of Directors; and provided the total number of securities issued after the Original Issue Date of the New Series A Preferred to such entities or persons does not exceed one percent of the issued and outstanding securities of the Corporation (calculated on a fully diluted basis);

(G) shares of Common Stock issued or issuable as a dividend or distribution on the Common Stock;

(H) securities issued (1) in a bona fide public offering in which all the shares of New Series A Preferred are automatically converted under Section 3(a), or (2) upon the election of at least fifty and one-tenth percent (50.1%) of the outstanding shares of New Series A Preferred in which all the shares of New Series A Preferred are automatically converted under Section 3(a);

(I) shares of capital stock, warrants or options to purchase shares of capital stock, convertible notes or other derivative securities outstanding on or before the Original Issue Date of the New Series A Preferred; or

(J) any securities issued or issuable upon exercise, conversion or exchange (in accordance with the terms thereof) of any securities described in subparts (A) - (I) above.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price of such series of Preferred Stock in effect on the date of, and immediately prior to such issue. No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made pursuant to Section 3(c)(iv) below as a result of any stock dividend or subdivision

which causes an adjustment in the Conversion Price of such series of Preferred Stock pursuant to Section 3(d) below. No adjustment of the Conversion Price of a particular series of Preferred Stock shall be made in an amount less than one percent of the Conversion Price, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be 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.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date of the New Series A Preferred, shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities 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 for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and 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 Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to paragraph 3(c)(v) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price of such particular series of Preferred Stock in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Conversion Price of such particular series of Preferred Stock shall be made upon the subsequent issue of 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 increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price of such particular series of Preferred Stock computed upon the original issue of such Options or Convertible Securities (or upon the occurrence of a record date with respect to the issuance of such Option's or Convertible Securities), 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; and

(C) on the expiration or cancellation of any Options or the termination of the right to convert or exchange any Convertible Securities which shall have not been exercised, if the Conversion Price of such particular series of Preferred Stock shall have been adjusted upon the original issuance of such Options or Convertible Securities or shall have been subsequently adjusted pursuant to clause (B) above, the Conversion Price of such particular series of Preferred Stock shall be recomputed as if:



(1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged plus the consideration actually received by the Corporation upon such conversion or exchange, if any, and

(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 upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to clauses (B) and (C) above shall have the effect of increasing the Conversion Price of such particular series of Preferred Stock to an amount which exceeds the lower of: (i) the Conversion Price of such particular series of Preferred Stock on the original adjustment date; or (ii) the Conversion Price of such particular series of Preferred Stock that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to paragraph 3(c)(iii)) without consideration or for consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price of the New Series A Preferred shall be reduced, concurrently with such issue, to the lowest price at which any of the Additional Shares of Common Stock are issued, if applicable

(v) Determination of Consideration. For purposes of this Section 3(c), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation;

(B) insofar as it consists of securities: (i) if the securities are then traded on a national securities exchange or the NASDAQ Stock Market (or a

similar national quotation system), then the value shall be computed based on the average of the closing prices of the securities on such exchange or system over the thirty-day (30-day) period ending three (3) days prior to receipt by the Corporation; (ii) if the securities are actively traded over-the-counter, then the value shall be computed based on the average of the closing bid prices over the thirty-day (30-day) period ending three (3) days prior to the receipt by the Corporation; and (iii) if there is no active public market, then the value shall be computed based on the fair market value thereof on the date of receipt by the Corporation, as determined in good faith by the Board of Directors;

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

(D) in the event Additional Shares of Common are issued (or, pursuant to Section 3(c)(iii), deemed to be issued) together with other shares or securities or other assets of the Corporation for consideration which covers a combination of cash, securities and other property, be the proportion of such consideration so received, computed as provided in clauses (A), (B) and (C) above, as determined in good faith by the Board of Directors.

(2) 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 paragraph 3(c)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue 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 for a subsequent adjustment of such consideration) 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

(y) the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(d) Adjustments for Stock Dividends, Subdivisions, Combinations, or Consolidations. In the event the Corporation shall pay a stock dividend on the Common Stock, or the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by reclassification, stock split or otherwise, into a greater or lesser number of shares of Common Stock, the Conversion Price for a particular series of Preferred Stock in effect immediately prior to such dividend, subdivision, combination or consolidation shall, concurrently with the effectiveness of such dividend, subdivision, combination or consolidation, be proportionately adjusted.

(e) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of a particular series of Preferred Stock pursuant to Sections 3(c) or (d) above, the Corporation at its expense promptly shall compute such adjustment or readjustment in accordance with the terms hereof and cause independent public accountants selected by the Corporation to verify such computation 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 a particular series of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth: (i) such adjustments and readjustments; (ii) the Conversion Price for such series of Preferred Stock 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 each share of such series of Preferred Stock.

(f) No Impairment. Except as otherwise approved by the holders of Preferred Stock as required by Section 5(a) below the Corporation will not, by amendment of its Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, 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 3 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 Preferred Stock against impairment.

(g) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) 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;

(ii) 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;

(iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iv) to merge with or into any other corporation (other than a merger in which the holders of the outstanding voting equity securities of the Corporation immediately prior to such merger hold more than fifty percent (50%) of the voting power of the surviving entity immediately following such merger), or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock:

at least twenty (20) 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 in respect of the

matters referred to in (iii) and (iv) above; and in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the 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).

Each such written notice shall be given by overnight courier or first class mail, postage prepaid, addressed to the holders of the Preferred Stock shares at the address for each such holder as shown on the books of this Corporation.

(h) Issue Taxes. This 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 Preferred Stock pursuant hereto; provided, however, that this Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(i) Reservation of Common Stock Issuable Upon Conversion. This 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 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 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 Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this 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 purposes.

(j) Recapitalization. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision or combination provided for in paragraph 3(d) or a merger, reorganization, consolidation or sale of assets transaction which is deemed to be a liquidation, dissolution or winding up pursuant to Section 2) provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock, the number of shares of stock or other securities or property of the Corporation to which a holder of Common Stock deliverable upon conversion of each share of such series would have been entitled upon such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section 3 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(4) Voting Rights and Directors.

(a) Except as otherwise required by law and as provided in Sections 5 below, the holders of Preferred Stock and the holders of Common Stock shall be entitled to notice of any shareholders' meeting and to vote together as a single class upon any matter

submitted to the shareholders for a vote, as follows: (i) each holder of Preferred Stock shall have one vote for each full share of Common Stock into which its shares of New Series A Preferred would be convertible on the record date for the vote; and (ii) the holders of Common Stock have one vote per share of Common Stock. The Corporation shall not amend, alter or repeal the preferences, special rights or other powers of a series of Preferred Stock without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of the series of Preferred Stock to which such amendment, alteration or repeal relates, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a class.

(5) Protective Provisions. In addition to any other rights provided by law, so long as any shares of New Series A Preferred shall be outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least fifty and one-tenth percent (50.1%) of the then outstanding shares of New Series A Preferred:

(a) alter or change the rights, preferences or privileges of the New Series A Preferred;

(b) increase or decrease (other than by conversion) the total number of authorized shares of any series of Preferred Stock;

(c) create (by reclassification or otherwise) or authorize the sale of shares of any class or series of stock which has rights, preferences or privileges equal to or senior to the New Series A Preferred;

(d) purchase or redeem any of the Corporation's securities unless the New Series A Preferred are redeemed first, provided, however, that this restriction shall not apply to (i) the repurchase of shares of Common Stock held by employees, officers, directors, consultants or other persons performing services for this Corporation pursuant to arrangements under which this Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment and (ii) the redemption of shares of Preferred Stock pursuant to Section 6 hereof;

(e) enter into a Change of Control;

(f) amend or waive any provision of the Corporation's Bylaws or Amended and Restated Articles of Incorporation;

(g) increase or decrease the authorized size of the Corporation's Board of Directors;

(h) pay or declare any dividends to the holders of Common Stock or Preferred Stock of the Corporation, except with respect to the New Series A Preferred pursuant to Article III, Section (b)(1)(a) hereof;

(i) enter into a Liquidation Event;

(j) enter into a material license of the Corporation's intellectual property or technology;

(k) enter into any transaction, other than on an arm's length-basis or in the ordinary course of business, with any entity or person holding 5% or more of the Corporation's securities (assuming the conversion or exercise of all issued and outstanding Common Stock equivalents);

(l) increase or decrease the authorized number of shares of Common Stock;

(m) take any action which results in any sale of twenty-five percent (25%) or more of the Corporation's business, assets, revenues or stock (assuming the conversion or exercise of all issued and outstanding Common Stock equivalents), bankruptcy or liquidation or any other transaction in which all or a Substantial Portion of the assets of the Corporation are sold, transferred or otherwise disposed of, or a substantial portion of the assets of the Corporation are licensed, except in the ordinary course of business;

(n) permit any subsidiary or affiliate of the Corporation (provided, however, that no holder of Preferred Stock of this Corporation shall be deemed an affiliate) to sell or issue any stock to any party other than the Corporation, except for joint venture and similar agreements as defined by and approved by two-thirds of the members of the Board of Directors;

(o) increase the number of shares of Common Stock reserved for issuance under the Corporation's stock option plans in excess of 2,123,935 shares (as adjusted for stock splits, stock dividends, recapitalizations and the like); or

(p) authorize the Corporation to incur or assume any debt, which in the aggregate would exceed \$100,000 at any given time.

(6) Redemption of Preferred Stock.

(a) The Corporation shall be obligated to redeem the Preferred Stock as follows:

(i) The holders of at least fifty and one-tenth percent (50.1%) of the then outstanding shares of the New Series A Preferred may require the Corporation, to redeem the shares of New Series A Preferred in three (3) equal annual installments, in immediately available United States funds, at any time on or after the fifth anniversary of the Original Issue Date for the New Series A Preferred (the date of each such annual installment, a "**Redemption Date**"). The Corporation shall effect such redemptions on the New Series A Redemption Date by paying in cash in exchange for the shares of New Series A Preferred to be redeemed a sum equal to the New Series A Liquidation Preference (as adjusted for any stock splits, stock dividends, recapitalizations and the like). The total amount to be paid for the New Series A Preferred is hereinafter referred to as the "**Redemption Price**." The number of shares of New Series A Preferred that the Corporation shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of New Series A Preferred outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such

calculation applies). Shares subject to redemption pursuant to this Section 6(a)(i) shall be redeemed from each holder of New Series A Preferred on a pro rata basis.

(ii) At least forty-five (45) days but no more than sixty (60) days prior to the first Redemption Date, the Corporation shall send a notice (a "**Redemption Notice**") to all holders of New Series A Preferred to be redeemed setting forth (A) the Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Corporation does not have sufficient funds legally available to redeem all shares to be redeemed at the Redemption Date, then it shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(iii) Notwithstanding anything to the contrary herein or in any other agreement of the Corporation, no other series of Preferred Stock, if any, shall have the right to request a redemption, until and only until, the shares of New Series A Preferred have been redeemed in full as set forth in Section 6(a)(i) above.

(b) On or prior to the Redemption Date, the Corporation shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Corporation pursuant to this Section 6(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 3 hereof no later than the fifth (5th) day preceding the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any funds deposited by the Corporation pursuant to this Section 6(b) remaining unclaimed at the expiration of one (1) year following such Redemption Date shall be returned to the Corporation promptly upon its written request.

(c) On or after such Redemption Date, each holder of shares of Preferred Stock to be redeemed shall surrender such holder's certificates representing such shares to the Corporation 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 canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Corporation is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; provided that in the event that shares of Preferred Stock are not redeemed due to a default in payment by the Corporation or because the Corporation does not have sufficient legally available funds, such shares of Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(d) Upon the occurrence of a Change of Control after a New Series A Redemption Date, then, at the election of holders of at least fifty and one-tenth percent (50.1%) of the then outstanding shares of New Series A Preferred, voting as a single series, the holders of the New Series A Preferred shall have the right, in their sole discretion, to either: (x) immediately accelerate the redemption payments on the New Series A Preferred set forth in Section 6(a)(i) above such that all redemption payments on the New Series A Preferred shall be due and owing on or prior to the closing of any such Change of Control, or (y) accept the consideration per share for those shares of New Series A Preferred then outstanding that those shares of New Series A Preferred would otherwise be entitled to receive in such Change of Control.

(e) Upon the occurrence of a change in the Corporation's business activity, within a one year period following the Original Issue Date of the New Series A Preferred, that renders the Corporation ineligible as a "**Small Business Concern**" (as such term is defined in the Small Business Investment Act), the holders of the New Series A Preferred shall have the right, in their sole discretion, to immediately accelerate the redemption payments on the New Series A Preferred set forth in Section 6(a)(i) above at a redemption price per share equal to the Original Purchase Price for the New Series A Preferred, plus any and all accrued but unpaid dividends.

(f) In the event of a default in payment of the Redemption Price for any series of Preferred Stock, and notwithstanding anything in these Amended and Restated Articles of Incorporation to the contrary, the number of directors on the Corporation's Board of Directors shall be increased so that the holders of any series of Preferred Stock requested to be redeemed, but not redeemed in its entirety, voting together as a single class, shall be entitled to elect at least seventy-five percent (75%) of the Board of Directors until such redemption is completed.

(7) Status of Converted Stock. In the event any shares of Preferred Stock shall be converted into Common Stock pursuant to Section 3 hereof, the shares of Preferred Stock so converted shall be canceled and shall not be issuable by the Corporation, and the Amended and Restated Articles of Incorporation of this Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(8) Residual Rights. All rights accruing to the outstanding shares of this Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

(9) Consent for Certain Repurchases of Common Stock Deemed to be Distributions. Each holder of Preferred Stock shall be deemed to have consented, for purposes of Section 502, 503 and 506(b)(2) of the California Corporations Code, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock, at cost, issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such right of repurchase between the Corporation and such persons.

#### IV.



(a) Limitation of Directors' Liability. To the fullest extent permitted under California law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director.

(b) Indemnification of Corporate Agents. The Corporation shall indemnify to the fullest extent permitted under California law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he or she, his or her testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

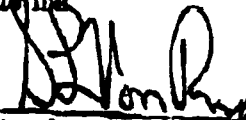
(c) Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article IV by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

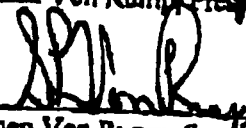
3. The foregoing Amended and Restated Articles of Incorporation have been duly approved by the Board of Directors.

4. The foregoing Amended and Restated Articles of Incorporation have 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 the Corporation is eleven million one hundred thirty-six thousand eight hundred fifty-four (11,136,854) shares of Common Stock, seven hundred forty-nine thousand nine hundred ninety-nine (749,999) shares of Series A Preferred, six million seven hundred seven thousand five hundred seventy (6,707,570) shares of Series B Preferred, six million six hundred thirty-eight thousand six hundred thirty-one (6,638,631) shares of Series C Preferred, twelve million one hundred sixty-five thousand eight hundred seventy-seven (12,165,877) shares of Series D Preferred, four hundred forty-nine thousand nine hundred ninety-three (449,993) shares of Series D-1 Preferred, eight million five hundred thousand (8,500,000) shares of Series D-2 Preferred and Ninety Million Six Hundred Seven Thousand Four Hundred Sixteen (90,607,416) shares of Series E Preferred. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was: (a) more than fifty percent (50%) of the Common Stock and more than fifty percent (50%) of the Preferred Stock, each class voting separately; (b) more than fifty percent (50%) of the outstanding shares of Series A Preferred, voting separately as a single series; (c) more than fifty percent (50%) of the outstanding shares of Series B Preferred, voting separately as a single series; (d) more than fifty percent (50%) of the outstanding shares of Series C Preferred, voting separately as a single series; (e) more than fifty percent (50%) of the outstanding shares of Series D Preferred, voting separately as a single series; (f) more than fifty percent (50%) of the outstanding shares of Series D-1 Preferred, voting separately as a single series; (g) more than fifty percent (50%) of the outstanding shares of Series D-2 Preferred, voting separately as a single series; and (h) more than sixty seven percent (67%) of the outstanding shares of Series E Preferred, voting separately as a single series.

The undersigned declares under penalty of perjury that the matters set forth in the foregoing certificate are true of his knowledge.

IN WITNESS WHEREOF, the undersigned have executed this certificate this 7  
day of January 2005, in the city of Fremont, California

  
\_\_\_\_\_  
Stephen Von Rump, President

  
\_\_\_\_\_  
Stephen Von Rump, Secretary