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

MAY 27 2005

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF ASCENDENT TELECOMMUNICATIONS INC.
a California corporation**

Debbie Miller and David Hubb certify as follows:

1. They are the duly elected and acting Chief Executive Officer and Assistant Secretary, respectively, of Ascendent Telecommunications Inc., a California corporation (the or this "Corporation").
2. The Articles of Incorporation of the Corporation are hereby amended and restated in their entirety to read in full as follows:

"ARTICLE I

The name of this Corporation is Ascendent Telecommunications Inc.

ARTICLE 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.

ARTICLE III

A. Designation of Stock. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Preferred Stock" and "Common Stock." The total number of shares which the Corporation is authorized to issue is sixty three million (63,000,000), of which forty million (40,000,000) shares shall be Common Stock no par value (the "Common Stock"), and twenty three million (23,000,000) shares shall be Preferred Stock par value \$0.001 per share (the "Preferred Stock"). The rights, preferences, privileges, restrictions and other matters relating to the twenty three million (23,000,000) shares of Preferred Stock are as follows. Four million one hundred thousand (4,100,000) of the shares of Preferred Stock shall be designated and known as Series A Preferred Stock ("Series A Preferred Stock" or "Series A Preferred"), ten million one hundred fifty thousand (10,150,000) of the shares of Preferred Stock shall be designated and known as Series B Preferred Stock ("Series B Preferred Stock" or "Series B Preferred") and eight million (8,000,000) of the shares of Preferred Stock shall be designated and known as Series B1 Preferred Stock ("Series B1 Preferred Stock" or "Series B1 Preferred"). The balance of the wholly unissued shares of Preferred Stock, if any, may be divided into such number of series as the Board of Directors may determine with such rights, preferences, privileges and restrictions as the Board of Directors may determine in connection herewith. Subject to the provisions of Section IV.E.(1)(b) ("Protective Provisions"), the rights, preferences, privileges and restrictions of any such additional series may be subordinated to, *pari passu* with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any

of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of wholly unissued shares of any series, prior or subsequent to the original issue of that series, but not below the number of shares of such series then outstanding. In case the number of wholly unissued shares of any series shall be so decreased, such shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE IV

A. Intentionally omitted.

B. Liquidation Rights.

(1) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or not:

The holders of Series B1 Preferred Stock shall be entitled to receive in preference to and before any payment on the Series B Preferred Stock, Series A Preferred Stock and Common Stock, an amount per share of Series B1 Preferred Stock equal to \$0.65 (sixty five cents) as adjusted after the date hereof for subsequent stock splits, dividends or recombinations and the like plus an amount equal to all accrued dividends (whether or not declared) and any other dividends declared but unpaid thereon (collectively, the "Series B1 Preference Amount"). After the Series B1 Preference Amount has been paid to the holders of Series B1 Preferred Stock and before any amount shall be paid to holders of Series A Preferred Stock and/or Common Stock, the holders of Series B Preferred Stock shall be entitled to receive in preference to and before any payment on the Series A Preferred Stock and Common Stock, an amount per share of Series B Preferred Stock equal to \$0.70 (seventy cents) as adjusted after the date hereof for subsequent stock splits, dividends, or recombinations and the like plus an amount equal to all accrued dividends (whether or not declared) and any other dividends declared but unpaid thereon (collectively, the "Series B Preference Amount"). After the Series B Preference Amount has been paid to the holders of Series B Preferred Stock and before any amount shall be paid to holders of Common Stock, the holders of Series A Preferred Stock shall receive an amount per share equal to \$1.744 (one dollar and seventy four and four tenths cents), as adjusted after the date hereof for subsequent stock splits, dividends, or recombinations and the like plus an amount equal to all accrued dividends (whether or not declared) and any other dividends declared but unpaid thereon (collectively, the "Series A Preference Amount," and, together with the Series B1 Preference Amount and the Series B Preference Amount, the "Preference Amount"). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and surplus funds distributed among the holders of Series B1 Preferred Stock, Series B Preferred Stock and Series A Preferred Stock shall be insufficient to permit the payment to such holders of Series B1 Preferred Stock, Series B Preferred Stock and Series A Preferred Stock of the Preference Amount, then the entire assets and surplus funds of the Corporation legally available for distribution shall be distributed as follows: (1) first, pro rata among the holders of Series B1 Preferred Stock, (2) second, once the Series B1 Preference Amount is paid in full, then any remaining amount shall be distributed pro rata among the holders of Series B Preferred Stock, and (3) third, once the Series B1 Preference Amount and the Series B Preference Amount are

paid in full, then any remaining amount pro rata among the holders of Series A Preferred Stock. If assets or surplus funds remain in the Corporation after distribution of the Preference Amount, then all remaining proceeds shall be distributed pro rata among the holders of the Common Stock, Series B1 Preferred Stock, Series B Preferred Stock, and Series A Preferred Stock, with the Series B1 Preferred Stock, Series B Preferred Stock and Series A Preferred Stock being treated on an as converted to Common Stock basis.

(2) For purposes of this Section IV B., a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, unless the holders of a majority of the Preferred Stock, voting together on an as converted to Common Stock basis, shall determine otherwise, the Corporation's sale of all or substantially all of its assets or the acquisition of the Corporation by or reorganization of this Corporation into or with another entity in which the shareholders of the Corporation do not own a majority of the outstanding voting shares of the surviving, purchasing, or newly resulting corporation, whether by means of merger or consolidation or reorganization resulting in the exchange of the outstanding shares of this Corporation for securities or consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary (each also referred to as a "Triggering Event" or "Liquidation Event"). No later than twenty (20) days before any liquidation, dissolution or winding up, the Corporation shall deliver a notice to each holder of Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock setting forth the principal terms of such event of liquidation, dissolution, or winding up of the Corporation. Such notice shall be deemed delivered upon personal delivery or five (5) days after deposit in the United States mail, by first class, registered or certified mail (in each case, prepaid), addressed to a party at its address as shown on the stock records of the Corporation. Such notice shall include a description of the amounts that would be paid to holders of Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock under this Section IV B. and of the consideration that such holders would receive if they were to exercise their rights to have shares of Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock, as the case may be, treated as if they had been converted into Common Stock. Unless waived by holders of at least two-thirds (2/3) in interest of the respective holders of the Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock, no later than fifteen (15) days after delivery of the notice, each holder of Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock may deliver an election to the Corporation notifying the Corporation that the holder desires that such holder's shares of Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock be treated as if they had been converted into shares of Common Stock and, if no such election is delivered to the Corporation, such holder shall receive such respective Series B1 Preference Amount, Series B Preference Amount and Series A Preference Amount as are provided for under this Section IV B.

(3) In the event the Corporation shall propose to take any action regarding the liquidation, dissolution or winding up of the Corporation which will involve the distribution of assets other than cash, the value of the assets to be distributed to the holders of shares of the Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock shall be determined in good faith by the consent or vote of the Board of Directors, and such determination shall be binding upon the holders of the Series A Preferred Stock, Series B Preferred Stock, Series B1 Preferred Stock and/or Common Stock, except that any securities distributed 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, the value shall be deemed to be the average of the securities' closing prices on such exchange over the thirty (30) day period ending two (2) 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 thirty (30) day period ending two (2) days prior to the closing; and/or

(iii) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the consent or vote of the Board of Directors and such determination shall be binding upon the holders of the Series A Preferred Stock, Series B Preferred Stock, Series B1 Preferred Stock, and Common Stock.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subparagraphs B.(3)(a)(i), (ii) or (iii) to reflect the approximate fair market value thereof, as determined in good faith by the consent or vote of the Board of Directors, and such determination shall be binding upon the holders of the Series A Preferred Stock, Series B Preferred Stock, Series B1 Preferred Stock and/or Common Stock.

C. Dividends.

(1) Preferred Stock. After the filing of these Second Amended and Restated Articles of Incorporation, the holders of the outstanding Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock shall be entitled to receive in any fiscal year, if, when and as declared by the Board of Directors, out of any assets at the time legally available therefor, dividends in cash at the rate of eight percent (8%) per annum of the Original Issue Price (as defined below) per share, respectively, of the Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock, as adjusted for any stock splits, dividends, recombinations and the like before any dividend is declared or paid on shares of Common Stock. Dividends may be payable quarterly or otherwise as the Board of Directors may from time to time determine. Dividends shall not be cumulative. Dividends must be declared and set aside for payment on the Series A Preferred Stock, Series B Preferred Stock and the Series B1 Preferred Stock at the same time.

(2) Common Stock. No distributions (as defined below) shall be paid on the Common Stock until the holders of the Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock then outstanding shall have first received all declared and unpaid dividends at the rates specified in paragraph C.(1) immediately above.

(3) Distributions Defined. For purposes of this Section IV C., unless the context requires otherwise, "distribution" shall mean the transfer of cash or property without consideration, whether by way of dividend or otherwise, payable other than in Common Stock or other securities of the Corporation, or the purchase or redemption of shares of the Corporation (other than repurchases of Common Stock held by employees of, or consultants to, the

Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase, or redemption by a subsidiary of the Corporation.

D. Conversion to Common Stock

The Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock shall be convertible into Common Stock of the Corporation as follows:

(1) Definitions. For purposes of this Section IV D. the following definitions shall apply:

(a) "Issuance Date" shall mean the first date on which the Corporation issues any shares of Series B1 Preferred Stock.

(b) (i) "Series A Conversion Price" shall mean the price, determined pursuant to this Section IV D., at which shares of Common Stock shall be deliverable upon conversion of Series A Preferred Stock.

(ii) "Series B Conversion Price" shall mean the price, determined pursuant to this Section IV D., at which shares of Common Stock shall be deliverable upon conversion of Series B Preferred Stock.

(iii) "Series B1 Conversion Price" shall mean the price, determined pursuant to this Section IV D., at which shares of Common Stock shall be deliverable upon conversion of Series B1 Preferred Stock.

(c) "Current Conversion Price" shall mean, as the case may be, respectively, either the Series A Conversion Price, Series B Conversion Price or the Series B1 Conversion Price immediately before the occurrence of any event, which, pursuant to this Section IV D., causes an adjustment to the Series A Conversion Price, Series B Conversion Price and/or Series B1 Conversion Price.

(d) "Convertible Securities" shall mean any indebtedness, obligations, or shares of stock convertible into or exchangeable for Common Stock, including Series A Preferred Stock, Series B Preferred Stock or Series B1 Preferred Stock.

(e) "Options" shall mean any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(f) "Common Stock Outstanding" shall mean the aggregate of all Common Stock outstanding and all Common Stock issuable upon exercise of all outstanding Options and conversion of all outstanding Convertible Securities.

(g) "Common Stock Equivalents" shall mean Convertible Securities and rights entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock without the payment of any consideration by such holder for such additional shares of Common Stock or Common Stock Equivalents.

(2) Right to Convert; Original Issue Price.

(a) Each holder of Series A Preferred Stock, Series B Preferred Stock or Series B1 Preferred Stock may, at any time, convert any or all of such shares of Series A Preferred Stock, shares of Series B Preferred Stock or shares of Series B1 Preferred Stock into fully-paid and nonassessable shares of Common Stock at its (their) respective Current Conversion Price. Each share of Series A Preferred Stock shall be convertible into the number of shares of Common Stock that results from dividing the Series A Conversion Price in effect at the time of conversion for Series A Preferred Stock into **\$0.70 (seventy cents)** for each share of Series A Preferred Stock being converted; the initial Series A Conversion Price ("Original Issue Price") shall be **\$0.70 (seventy cents)** per share of Common Stock. Each share of Series B Preferred Stock shall be convertible into the number of shares of Common Stock that results from dividing the Series B Conversion Price in effect at the time of conversion for Series B Preferred Stock into **\$0.70 (seventy cents)** for each share of Series B Preferred Stock being converted; the initial Series B Conversion Price ("Original Issue Price") shall be **\$0.70 (seventy cents)**. Each share of Series B1 Preferred Stock shall be convertible into the number of shares of Common Stock that results from dividing the Series B1 Conversion Price in effect at the time of conversion for Series B1 Preferred Stock into **\$0.65 (sixty five cents)** for each share of Series B1 Preferred Stock being converted; the initial Series B1 Conversion Price ("Original Issue Price") shall be **\$0.65 (sixty five cents)**. The Series A Conversion Price, Series B Conversion Price, and Series B1 Conversion Price shall be subject respectively to adjustment from time to time in certain instances as hereinafter provided. No adjustments with respect to conversion shall be made on account of any dividends that may be declared but unpaid on the Series A Preferred Stock, Series B Preferred Stock or Series B1 Preferred Stock surrendered for conversion, but no dividends shall thereafter be paid on the Common Stock unless all such unpaid dividends have first been paid to the holders of Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock, respectively, entitled to payment at the time of conversion of the Series A Preferred, Series B Preferred, and Series B1 Preferred.

(b) Before any holder of Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock, respectively, shall be entitled to convert the same into Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, to the office of the Corporation or any transfer agent for such Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock and shall give written notice to the Corporation at such office that he elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock, or to its nominee or nominees, certificates for the number of full shares of Common Stock to which it shall be entitled, together with cash in lieu of any fraction of a share as hereinafter provided, and, if less than all of the shares of Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock represented by such certificates are converted, a certificate representing the shares of Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock not converted. Such conversion shall be deemed to have been made as of the date of such surrender of the certificate for the Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock to be converted, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on such date. If the conversion is in connection with an offer of securities registered pursuant to the Securities Act of

1933, as amended (the "Securities Act"), the conversion may, at the option of any holder tendering Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock shall not be deemed to have converted such Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock until immediately prior to the closing of such sale of securities.

(3) Adjustments to Conversion Price. Subject to subsection D.(3)(j) below, the Series A Conversion Price, Series B Conversion Price, and Series B1 Conversion Price in effect from time to time shall be respectively subject to adjustment in certain cases as follows:

(a) Issuance of Additional Shares of Common Stock. In case the Corporation shall at any time after the Issuance Date issue or sell any Common Stock, Options, Convertible Securities, or Common Stock Equivalents (hereinafter, the "Additional Shares of Common Stock") without consideration or for a consideration per share less than the Current Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock, as the case may be, except as set forth in Section IV D.(3)(d), then the applicable Current Conversion Price shall simultaneously with such issuance or sale be adjusted to a Series A Conversion Price, Series B Conversion Price or Series B1 Conversion Price, respectively, (calculated to the nearest cent) determined by multiplying such then applicable Current Conversion Price by a fraction,

(A) the numerator of which shall be (x) the number of shares of Common Stock Outstanding at the close of business on the day immediately preceding the date of such issuance or sale, plus (y) the number of shares of Common Stock which the aggregate consideration received (or by the express provisions hereof deemed to have been received) by the Corporation for the total number of Additional Shares of Common Stock so issued or sold would purchase at such then Current Conversion Price for the Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock, as applicable, and (B) the denominator of which shall be the number of shares of Common Stock Outstanding at the close of business on the date of such issuance or sale after giving effect to such issuance or sale of Additional Shares of Common Stock. For the purpose of the immediately preceding calculation described in this Section IV D.(3)(a), the number of shares of Common Stock Outstanding shall include, in addition to the number of shares of Common Stock actually outstanding, the number of shares of Common Stock (x) into which the Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock could be converted if fully converted on the day immediately preceding the issuance or sale or deemed issuance or sale of Additional Shares of Common Stock and (y) for or into which any then outstanding warrants and other rights to subscribe for or purchase Common Stock or Convertible Securities could be exercised (but not options under any Corporation stock option or stock purchase plan approved by the Corporation's Board of Directors).

For purposes of this subsection D.(3)(a), the following provisions shall also be applicable:

(i) Cash Consideration. In case of the issuance or sale of Additional Shares of Common Stock for cash, the consideration received by the Corporation

therefor shall be deemed to be the amount of cash received by the Corporation for such shares (or, if such shares are offered by the Corporation for subscription, the subscription price, or, if such shares are sold to underwriters or dealers for public offering without a subscription offering, the initial public offering price), without deducting therefrom any compensation or discount paid or allowed to underwriters or dealers or others performing similar services or for any expenses incurred in connection therewith.

(ii) Non-Cash Consideration. In case of the issuance (otherwise than upon conversion or exchange of Convertible Securities) or sale of Additional Shares of Common Stock for consideration other than cash or for consideration a part of which shall be other than cash, the fair value of such consideration as determined by the Board of Directors of the Corporation in the good faith exercise of its business judgment, irrespective of the accounting treatment thereof, shall be deemed to be the value, for purposes of this Section IV D., of the consideration other than cash received by the Corporation for such securities.

(iii) Options and Convertible Securities. In case the Corporation shall in any manner issue or grant any Options or any Convertible Securities, the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities at the time such Convertible Securities first become convertible or exchangeable shall (as of the date of issue or grant of such Options or, in the case of the issue or sale of Convertible Securities other than where the same are issuable upon the exercise of Options, as of the date of such issue or sale) be deemed to be issued and to be outstanding for the purpose of this subsection D.(3)(a)(iii) and to have been issued for the sum of the amount (if any) paid for such Options or Convertible Securities and the amount (if any) payable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities at the time such Convertible Securities first become convertible or exchangeable; provided, however, that, subject to the provisions of subsection D.(3)(b) below, no further adjustment of the Current Conversion Price shall be made upon the actual issuance of any such Common Stock or Convertible Securities or upon the conversion or exchange of any such Convertible Securities.

(b) Change in Option Price or Conversion Rate. If the purchase price provided for in any Option referred to in subsection D.(3)(a)(iii), or the rate at which any Convertible Securities referred to in subsection D.(3)(a)(iii) are convertible into or exchangeable for shares of Common Stock shall change at any time (other than under or by reason of provisions designed to protect against dilution), the Current Conversion Price in effect at the time of such event shall forthwith be readjusted to the Series A Conversion Price, Series B Conversion Price, or Series B1 Conversion Price, as applicable, that would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time same were initially granted, issued or sold. If the purchase price provided for in any such Option referred to in subsection D.(3)(a)(iii), or the additional consideration (if any) payable upon the conversion or exchange of any Convertible Securities referred to in subsection D.(3)(a)(iii), or the rate at which any Convertible Securities referred to in subsection D.(3)(a)(iii) are convertible into or exchangeable for shares of Common Stock, shall be reduced at any time under or by reason of provisions with respect thereto designed to protect against dilution, then, in case of the delivery of shares of Common Stock upon the exercise of any such Option or upon conversion or

exchange of any such Convertible Securities, the then Current Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock, as applicable, shall, upon issuance of such shares of Common Stock, be adjusted to such amount as would have been obtained had such Option or Convertible Securities never been issued and had adjustments been made only upon the issuance of the shares of Common Stock delivered as aforesaid and for the consideration actually received for such Option or Convertible Securities and the Common Stock.

(c) Termination of Option or Conversion Rights. Upon the termination or expiration of any right to purchase Common Stock under any Option or of any right to convert or exchange Convertible Securities, the Current Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock, as applicable, shall, upon such termination, be changed to the Series A Conversion Price, Series B Conversion Price, and/or Series B1 Conversion Price that would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued, and the shares of Common Stock issuable thereunder shall no longer be deemed to be Common Stock Outstanding.

(d) Stock Splits; Dividends; Distributions and Combinations. If the Corporation shall at any time or from time to time after the Issuance 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 Common Stock Equivalents, then, following such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Series A Conversion Price, Series B Conversion Price and Series B1 Conversion Price, as applicable, shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred Stock, Series B Preferred Stock or Series B1 Preferred Stock, as the case may be, shall be increased in proportion to such increase in the number of outstanding shares of Common Stock (including for this purpose, Common Stock Equivalents). If the number of outstanding shares of Common Stock at any time after the Issuance Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Series A Conversion Price, Series B Conversion Price, and Series B1 Conversion Price, as applicable, shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred, Series B Preferred and Series B1 Preferred shall be decreased in proportion to such decrease in the number of outstanding shares of Common Stock.

(e) Other Dividends. If this Corporation shall declare a distribution payable in securities of other persons, evidence of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection D.(3)(a)(iii), then, in each such case for the purpose of this subsection D.(3)(e), the respective holders of Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock are convertible as of

the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time, there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or a sale of assets transaction provided for elsewhere in this Section IV D.), provision shall be made so that the holders of Series A Preferred Stock, Series B Preferred Stock, and Series B1 Preferred Stock shall thereafter be entitled to receive upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon such conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section IV D. with respect to the rights of the holders of Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock, after the recapitalization to the end that the provisions of this Section IV D. (including adjustment of the respective Series A Conversion Price, Series B Conversion Price, and Series B1 Conversion Price then in effect and the number of shares respectively purchasable upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock, and Series B1 Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) Successive Changes. The above provisions of this Section IV D. shall similarly apply to successive issuances, sales, dividends or other distributions, subdivisions and combinations on or of the Common Stock after the Issuance Date.

(h) Other Events Altering Conversion Price. Upon the occurrence of any event not specifically described in this Section IV D as reducing the Series A Conversion Price, Series B Conversion Price and/or Series B1 Conversion Price that, in the reasonable exercise of the business judgment of the Board of Directors of the Corporation reached in good faith, requires, on equitable principles, the reduction of the Series A Conversion Price, Series B Conversion Price, and/or Series B1 Conversion Price, then the respective Conversion Price will be so equitably reduced.

(i) No Impairment. The Corporation will not, by amendment of these Second Amended and Restated Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, liquidation, 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 IV D. 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 Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock against impairment. Notwithstanding the foregoing, the rights of the holders of all shares of any Series of Preferred Stock may be waived by holders of two-thirds (2/3) or more of the number of shares of such Series then outstanding.

(j) Excluded Events. Notwithstanding any other provision in this Section IV D. which is inconsistent with or contrary to the terms of this paragraph (j), the Series A Conversion Price, Series B Conversion Price, and/or Series B1 Conversion Price shall

not be adjusted pursuant to Section IV D.(3)(a) by virtue of: (a) the conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series B1 Preferred Stock into shares of Common Stock; (b) the repurchase of shares of Common Stock from the Corporation's employees, consultants, officers or Directors at such person's cost (or at such other price as may be agreed to by the Board of Directors) and any subsequent reissuance of such shares provided that such shares are outstanding as of the Issuance Date; (c) the issuance and sale of Additional Shares of Common Stock pursuant to a grant under the Corporation's stock option plans or stock purchase plans at a price in each case which is less than the respective Original Issue Price of the Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock at the time of such issuance or sale, including any repurchase of such Common Stock shares or shares of Common Stock underlying the Additional Shares of Common Stock and subsequent issuance of same (all as determined in accordance with this Section IV D.), as may be approved by the Board of Directors; (d) the issuance of Additional Shares of Common Stock in connection with the acquisition by the Corporation of another business entity or majority ownership thereof unanimously approved by the Board of Directors; (e) the issuance of Additional Shares of Common Stock to lease companies, real estate lessors, banks or financial institutions, in connection with any lease or debt financing transaction approved by the Board of Directors; (f) shares of Common Stock or Preferred Stock issuable upon exercise of Options, Convertible Securities or Common Stock equivalents outstanding as of the filing date these Second Amended and Restated Articles of Incorporation; (g) shares issued in connection with a transaction described in Sections IV D.(3)(d), (e) or (f); (h) the issuance of Additional Shares of Common Stock in connection with a strategic investment and/or acquisition of technology or intellectual property approved by the Board of Directors not principally for equity financing purposes; (i) the issuance of Common Stock or Convertible Securities as described in the last proviso of Section IV D.(3)(a)(iii); (j) the issuance of shares of Series B1 Preferred Stock; or (k) subject to Section IV D.(3)(d), by way of a dividend or other distribution on shares of Common Stock, Preferred Stock, Convertible Securities or Additional Shares of Common Stock issued as set forth by the foregoing clauses (a) through (j).

(k) No Fractional Shares. No fractional shares shall be issued upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock. The Corporation shall pay in cash the fair value of fractions of a share (as of the time when those entitled to receive such fractions are determined) to any holder of Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock in lieu of any fraction of a share. Any fractional shares shall be aggregated with any other fractional shares resulting from any other conversion being made by each holder at such time.

(l) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price, Series B Conversion Price, and/or Series B1 Conversion Price pursuant to this Section IV D., the Corporation, at its expense and upon request by any holder of Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock, shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock or Series B1 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 Series A Preferred Stock, Series B Preferred Stock or Series B1 Preferred Stock furnish or cause to be furnished to such

holder a like certificate setting forth (a) such adjustment and readjustment, (b) the applicable Current Conversion Price, and (c) 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 a share of Series A Preferred Stock, Series B Preferred Stock or Series B1 Preferred Stock, as the case may be.

(4) Conversion.

(a) Automatic Conversion. Each share of Series A Preferred, Series B Preferred, and/or Series B1 Preferred shall automatically be converted into shares of Common Stock, at the applicable Current Conversion Price at any time: (i) upon the affirmative election of the holders of at least a two-thirds (2/3) majority of the outstanding shares of the Series A Preferred, Series B Preferred, and the Series B1 Preferred, voting together or consenting thereto as one class on an as converted to Common Stock basis; or (ii) immediately upon the closing of the sale of the Corporation's Common Stock in a firmly underwritten offering registered on the Corporation's registration statement on a Form S-1 or SB-1 under the Securities Act (or any other form equivalent thereto) pursuant to which Common Stock is sold to the public by the Corporation (or selling shareholders, if any) at a price more than five times (5X) the Original Issue Price of the respective Series A Preferred, Series B Preferred or Series B1 Preferred in a public offering registered under the Securities Act, at an aggregate public offering price not less than Twenty Million Dollars (\$20,000,000), prior to underwriting commissions and expenses. On and after said conversion date, notwithstanding that any certificate for shares of Series A Preferred, Series B Preferred or Series B1 Preferred shall not have been surrendered for conversion, the shares of Series A Preferred, Series B Preferred or Series B1 Preferred evidenced thereby shall be deemed to be no longer outstanding, and all rights with respect thereto shall forthwith cease and terminate, except only the rights of the holder (a) to receive the shares of Common Stock to which he shall be entitled upon conversion thereof, (b) to receive the amount of cash payable in respect of any fractional share of Common Stock to which he shall be entitled, and (c) with respect to dividends declared but unpaid on Series A Preferred, Series B Preferred and/or Series B1 Preferred prior to such conversion date. In the event that any holder of Series A Preferred, Series B Preferred or Series B1 Preferred presents such holder's certificate therefor for surrender to the Corporation or its transfer agent upon such conversion, a certificate for the number of shares of Common Stock into which the shares of Series A Preferred, Series B Preferred and/or Series B1 Preferred surrendered were convertible on such conversion date will be promptly issued and delivered to such holder.

(b) Special Mandatory Conversion.

(A) At any time following the Issuance Date, if:

(i) the Corporation proposes to offer, sell or issue equity securities or securities convertible into equity securities in which gross proceeds are anticipated to be at least Four Million Nine Hundred Ninety Nine Thousand Nine Hundred Ninety Nine Dollars (\$4,999,999.00) at a price (per Common Stock Equivalent share) less than the Series A Current Conversion Price, Series B Current Conversion Price, and/or Series B1 Current Conversion Price, respectively ("Effective Price"), immediately prior to the issuance of such equity securities or securities convertible into equity securities (the "Dilutive Equity Financing");

(ii) this Corporation (a) has provided twenty (20) days notice to each holder of Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock stating its bona fide intention to sell such securities, the number of shares of Common Stock or Common Stock Equivalents being offered and the price and terms upon which it proposes to offer such securities (the "Notice"), or the obligation to deliver the Notice has been waived by holders of a majority of the Series A Preferred Stock, Series B Preferred Stock, and Series B1 Preferred Stock, voting together on an as converted to Common Stock basis and (b) thereafter proceeds to consummate the Dilutive Equity Financing; and

(iii) a holder of Series A Preferred Stock, Series B Preferred Stock or Series B1 Preferred Stock with a Current Conversion Price greater than the respective Effective Price does not acquire at least his, her or its Pro Rata Portion (as defined below) according to such Notice (a "Non-Participating Holder") offered in such Dilutive Equity Financing (a "Mandatory Offering");

then, as the case may be, to the extent the Non-Participating Holder fails to purchase at least his, her or its Pro Rata Portion of the Dilutive Equity Financing, all of such Non-Participating Holder's respective Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock shall automatically and without further action on the part of such holder be converted effective upon, subject to, and concurrently with, the consummation of the Mandatory Offering (the "Mandatory Offering Date") into that number of shares of Common Stock that would be issuable upon a voluntary conversion pursuant to Section D(2) at the then-Current Conversion Price immediately prior thereto; provided, however, that no such conversion shall occur in connection with a particular Dilutive Equity Financing if the provisions of this subsection D.(4)(b) are waived with respect to such Dilutive Equity Financing by holders of two thirds or more of the Series A Preferred Stock, Series B Preferred Stock, and Series B1 Preferred Stock voting together on an as converted to Common Stock basis. Upon conversion pursuant to this subsection D.(4)(b), the shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock so converted shall be cancelled. For purposes of this subsection D.(4)(b), "Pro Rata Portion" shall mean that portion of the offered securities that equals the proportion that the number of shares of Preferred Stock issued and held by such holder on an as converted to Common Stock basis (assuming full conversion and exercise of all Preferred Stock, and other convertible and exercisable securities then outstanding into Common Stock) at the time the Corporation sends the Notice of such Dilutive Equity Financing to holders of Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock, as the case may be, bears to the total number of shares of Common Stock of the Corporation then outstanding on an as converted to Common Stock basis (assuming full conversion and exercise of all Preferred Stock, and other convertible and exercisable securities then outstanding into shares of Common Stock).

(B) The holder of any shares of Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock converted pursuant to this subsection D.(4)(b) shall deliver to this Corporation during regular business hours at the office of any transfer agent of the Corporation for the Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock, as the case may be, or at such other place as may be designated by the Corporation, the certificate(s) for the shares so converted, duly endorsed or assigned in blank to this Corporation. As promptly as practicable thereafter, this Corporation shall issue and deliver

to such holder, at the place designated by such holder, certificate(s) for the number of full shares of the Common Stock to be issued and such holder shall be deemed to have become a shareholder of record of Common Stock on the Mandatory Offering Date unless the transfer books of this Corporation are closed on that date, in which event he, she or it shall be deemed to have become a shareholder of record of Common Stock on the next succeeding date on which the transfer books are open; provided that if no such delivery shall occur by the holder of the Series A Preferred Stock, Series B Preferred Stock, or Series B1 Preferred Stock, the respective Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock shall still be cancelled and the shares converted into Common Stock as aforesaid.

(C) Notwithstanding the foregoing, the following issuances of securities of the Corporation shall not be deemed a "Dilutive Equity Financing": (a) the conversion of shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock into shares of Common Stock; (b) the repurchase of securities from the Corporation's employees, consultants, officers or directors at such person's cost (or at such other price as may be agreed to by the Board of Directors) and any subsequent reissuance of such securities provided that such securities are outstanding as of the date hereof; (c) the issuance and sale of securities pursuant to a grant under the Corporation's stock option plans or stock purchase plans, including any repurchase of such securities and subsequent issuance of same as may be approved by the Board of Directors; (d) the issuance of securities in connection with the acquisition by the Corporation of another business entity or majority ownership thereof unanimously approved by the Board of Directors; (e) the issuance of securities to lease companies, real estate lessors, banks or financial institutions, in connection with any lease or debt financing transaction approved by the Board of Directors; (f) securities issuable upon exercise of Options, convertible securities or Common Stock Equivalents outstanding as of the Issuance Date; (g) securities issuable in connection with any stock split, stock dividend, or other distribution on the Corporation's outstanding securities or securities issued upon any recapitalization of the Corporation or as a result thereof in exchange for any then outstanding securities; (h) the issuance of securities in connection with a strategic investment and/or acquisition of technology or intellectual property approved by the Board of Directors not principally for equity financing purposes; (i) the issuance of securities pursuant to a bona fide, firmly underwritten public offering of securities of Common Stock registered under the Securities Act; (j) the issuance of securities pursuant to the conversion or exercise of convertible or exercisable securities; (k) the issuance of stock, warrants or other securities or rights to persons or entities with which the Corporation has business relationships, provided such issuances are primarily for other than equity financing purposes; or (l) the issuance of securities that, with unanimous approval of the Board of Directors, are not offered to any existing shareholder of the Corporation.

(D) The provisions of this Subsection D.(4)(b) shall be of no further force or effect upon the earlier to occur of (i) the sale of the Corporation's securities pursuant to a registration statement filed by the Corporation under the Securities Act in connection with a firm commitment underwritten offering of its securities to the general public is consummated, (ii) the date the Company first becomes subject to the periodic reporting requirements of Section 12 or 15(d) of the Securities Exchange Act of 1934, as amended, (iii) a Liquidation Event, or (iv) when fewer than one million (1,000,000) shares (as adjusted for subsequent stock splits, combinations or reclassifications) of Preferred Stock are outstanding.

E. Voting Rights.

(1) (a) In General.

Each holder of shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series B1 Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such Series A Preferred Stock, Series B Preferred and/or Series B1 Preferred Stock could be converted on the record date for the vote or the date of the solicitation of any written consent of shareholders and, except as otherwise specifically provided herein, shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Series A Preferred Stock, Series B Preferred Stock and/or Series B1 Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation and, except those matters required by law or these Second Amended and Restated Articles of Incorporation to be submitted to a class vote, shall vote with holders of the Common Stock upon all matters submitted to a vote of shareholders (including the election of directors). Holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock, and Series B1 Preferred Stock shall be entitled to cumulate their votes in any election of directors in accordance with the provisions of the California General Corporation Law. Fractional votes by the holders of Series A Preferred Stock, Series B Preferred Stock, and Series B1 Preferred stock shall not, however, be permitted, and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (0.5 and higher being rounded up and less than 0.5 being rounded down).

(b) Specific Voting Rights.

(1) Series B Preferred Stock and Series B1 Preferred Stock Voting Rights. The consent of holders of at least two-thirds (2/3) of the Series B Preferred Stock and Series B1 Preferred Stock, voting together, shall be required for any action proposed to be taken by the Corporation which:

(i) alters or changes the rights, preferences, privileges or restrictions of the shares of Series B Preferred Stock or Series B1 Preferred Stock so as to affect such shares adversely; increases or decreases (other than by conversion) the total number of authorized shares of Series B Preferred Stock or Series B1 Preferred Stock;

(ii) creates or issues any new class or series of stock or creates any other securities, bonds, notes, or other obligations convertible into or exchangeable for or with equity securities of the Corporation in either case having a preference over (including securities having rights similar to those granted under this paragraph), or being on a parity with, the Series B Preferred Stock or Series B1 Preferred Stock, with respect to voting, dividends, or upon liquidation, dissolution or winding up (including, without limitation, any transaction deemed to be a liquidation, dissolution or winding up pursuant to Section IV B.(2));

(iii) effects any reclassification, recapitalization or reorganization of the capital stock of the Corporation, merger of the Corporation with or into a

third party, any change of control of the Corporation by the sale of at least fifty percent (50%) of the Corporation's voting or non-voting securities in one or a series of related transactions, liquidates or dissolves the Corporation;

(iv) declares any dividend on any securities junior to the Series B1 Preferred Stock or Series B Preferred Stock or repurchases any securities of the Corporation except as set forth above in Section IV C. (3) or Section IV F., or Section IV G. below;

(v) unless such is approved by the Corporation's Board of Directors, which approval includes at least one Board member elected solely by the Series B Preferred Stock, sells, conveys or otherwise disposes of or encumbers all or substantially all of the property or assets of the Corporation (including, for purposes of this paragraph, intellectual property rights which, in the aggregate, constitute substantially all of the Corporation's material assets);

(vi) increases or decreases the size of the Board of Directors beyond five (5) Directors;

(vii) amends or repeals any provision of, or adds any provision to, this Corporation's Second Amended and Restated Articles of Incorporation or Bylaws, as applicable ;

(vii) unless such is approved by the Corporation's Board of Directors, which approval includes at least one Board member elected solely by the Series B Preferred Stock, authorizes (x) payment in excess of more than \$500,000.00 in cash to any third party or in value of securities of the Corporation in one or a series of related transactions or (y) borrowings in excess of \$500,000.00;

(ix) unless approved by the Board of Directors, including the vote of both members elected separately by the Series B Preferred Stock, increases the number of shares available for issuance pursuant to the Corporation's existing 2001 Stock Option Plan in excess of that in effect on the date of the filing of these Second Amended and Restated Articles ("Excluded Events") or establish any new plan or arrangement for such issuance;

(x) establishes any joint venture(s), partnership(s), or non-wholly owned subsidiaries by the Corporation;

(xi) constitutes a transaction or agreement between the Corporation and any shareholder, officer or director (including his or her immediate family or affiliates (for these purposes an "affiliate" is someone controlled by, controlling, or under the common control of any shareholder, officer or director)) of the Corporation except in connection with (a) ordinary course employment or other non-employment matters, provided that such terms are approved as fair by a disinterested majority of the Board of Directors, (b) the issuance of Series B1 Preferred Stock and the arrangements incident thereto or (c) the issuance of other equity securities on terms approved by a disinterested majority or special committee of the Board of Directors; or

(xii) constitutes an agreement or commitment to take or enter into any of the foregoing actions.

(2) Series A Preferred Stock Voting Rights. The consent of a majority of the Series A Preferred Stock shall be required for any action proposed to be taken by the Corporation which:

(i) alters or changes the rights, preferences, privileges or restrictions of the shares of Series A Preferred Stock so as to affect such shares adversely in comparison to all other Preferred; increases or decreases (other than by conversion) the total number of authorized shares of Series A Preferred Stock;

(ii) declares any dividend on any securities junior to the Series A Preferred Stock or repurchases any securities of the Corporation except as set forth in Sections IV D.(3)(f) and (j) and Section IV F. and IV G. of these Second Amended and Restated Articles of Incorporation;

(iii) increases or decreases the size of the Board of Directors beyond five (5) Directors; or

(iv) constitutes an agreement or commitment to take or enter into any of the foregoing actions.

(3) Common Stock Voting Rights.

Each holder of Common Stock shall be entitled to one vote per share of Common Stock held by such holder and shall be entitled to notice of meetings in accordance with the Corporation's Bylaws.

(c) Board of Directors. The Corporation's Board of Directors shall consist of five (5) members, until changed by amendment of these Second Amended and Restated Articles of Incorporation. The holders of Series A Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director. The holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. The holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board of Directors at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director. The holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock, voting together as a separate class on an as converted to Common Stock basis, shall be entitled to elect one (1) member of the Board of Directors at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from

office such director and to fill any vacancy caused by the resignation, death or removal of such director. All other directors shall be elected by a majority of the holders of Common Stock and Preferred Stock, voting together as a single class.

F. Repurchase of Shares.

In connection with repurchases by the Corporation of its Common Stock pursuant to agreements with the holders thereof (i) upon their termination of any status pursuant to which they provide services to the Corporation or (ii) pursuant to the Corporation's exercise of any rights of first refusal as to such Common Stock, each holder of Series A Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock shall be deemed to have consented, for purposes of Sections 502 and 503 of the California General Corporation Law, to distributions made by the Corporation with respect to such repurchases.

G. Redemption.

(1) Mandatory Redemption of Series B1 Preferred Stock.

(a) Subject to the terms and conditions of this Section IV G.(1) and to any liquidation preference rights which may have been previously invoked under Section IV B. hereof, to the extent that any outstanding shares of Series B1 Preferred Stock have not been redeemed or converted into Common Stock prior to the fifth anniversary of the Issuance Date, if the Corporation shall receive, on a date at least three (3) months but not more than six (6) months prior to the fifth anniversary of the Issuance Date, a written request signed by the holders of at least two thirds (2/3) of the then outstanding shares of Series B1 Preferred Stock, voting together as a single class, for redemption of the Series B1 Preferred Stock under this Section IV G.(1), the Corporation shall redeem: on the fifth anniversary of the Issuance Date (hereafter a "Redemption Date"), a number of shares of Series B1 Preferred Stock equal to one-third (1/3rd) of the shares of Series B1 Preferred Stock that are outstanding on the date the Corporation receives such written redemption request, on the sixth anniversary date, an additional one-third (1/3rd) of the shares of Series B1 Preferred Stock that are outstanding on the date the Corporation receives such written redemption request, and on the seventh anniversary date (each of the sixth and seventh anniversary dates are also a Redemption Date), all then remaining outstanding shares of Series B1 Preferred Stock; provided, however, that the Corporation, at its sole option and discretion, to the extent permitted by law, may redeem a greater number (including all) of the outstanding shares of Series B1 Preferred Stock at the "Redemption Price" set forth in this Section IV G.(1) at any time on or after receiving a written redemption request as described in this sentence. Redemption shall be made from any source of funds legally available therefor at the Redemption Price therefor described in this Section IV G.(1) until all outstanding shares of Series B1 Preferred Stock have been redeemed or converted to Common Stock as provided in Section IV D. The Redemption Price for each share of Series B1 Preferred Stock shall be the Series B1 Preference Amount, less the amount of any cash dividends previously paid to the holders of Series B1 Preferred Stock.

If upon any Redemption Date scheduled under this Section IV G.(1) for the redemption of Series B1 Preferred Stock, (i) the funds and assets of the Corporation legally available to redeem such Series B1 Preferred Stock shall be insufficient to redeem all the shares of Series B1 Preferred Stock then scheduled for redemption or (ii) the Corporation shall for any reason fail to pay the Redemption Price in full on all shares then scheduled for redemption, then such shall be an "Event of Default." Upon any Event of Default,

(i) such unredeemed shares shall be redeemed (together with any other shares of Series B1 Preferred Stock then scheduled to be redeemed) at the next such scheduled Redemption Date to the full extent of legally available funds of the Corporation at such time. Series B1 Preferred Stock subject to redemption hereunder but which has not been redeemed due to insufficient legally available funds and assets of the Corporation shall continue to be outstanding and entitled to all dividend, liquidation, conversion and other rights, preferences, privileges and restrictions of the Series B1 Preferred Stock until such shares have been converted or redeemed, and

(ii) notwithstanding anything in this Section IV G.(1) to the contrary, the Corporation shall not be obligated to undertake any redemption unless immediately following any such redemption, the Corporation shall have outstanding one (1) or more shares of one (1) or more classes or series of stock, which share, or shares together, shall have full voting rights.

(b) Partial Redemption. No redemption shall be made under this Section IV G. (1) of only a part of the then outstanding shares of Series B1 Preferred Stock, unless the Corporation shall effect such redemption pro rata among all holders of the then outstanding Series B1 Preferred Stock according to the number of shares held by each holder thereof on the applicable Redemption Date.

(c) Redemption Notice. At least twenty (20) but no more than sixty (60) days prior to each Redemption Date, the Corporation shall mail written notice, postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series B1 Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder or given by the holder to the Corporation for the purpose of notice or, if no such address appears or is given, at the place where the principal executive office of the Corporation is located, notifying such holder of the redemption to be effected, specifying the subsection hereof under which such redemption is being effected, the Redemption Date, the applicable Redemption Price, the number of such holder's shares of Series B1 Preferred Stock to be redeemed, the place at which payment may be obtained and the date on which such holder's conversion rights (as set forth in Section IV D.) as to such shares terminate (which date shall in no event be earlier than three (3) days prior to the Redemption Date) and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the certificate or certificates representing the shares to be redeemed (the "Redemption Notice").

(d) Surrender of Certificates. On or before each designated Redemption Date, each holder of Series B1 Preferred Stock to be redeemed shall (unless such holder has previously exercised his right to convert such shares of Series B1 Preferred Stock into Common Stock as provided in Section IV D. above), surrender the certificate(s) representing such shares of Series

B1 Preferred Stock to be redeemed to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate(s) as the owner thereof, and each surrendered certificate shall be cancelled and retired. If less than all of the shares represented by such certificate are redeemed, then the Corporation shall promptly issue a new certificate representing the unredeemed shares.

(e) Effect of Redemption. If (a) the Redemption Notice shall have been duly given, and (b) on the Redemption Date the Redemption Price is either paid or made available for payment through the deposit arrangements specified in subsection G.(1)(f) below, then notwithstanding that the certificates evidencing any of the shares of Series B1 Preferred Stock called for redemption shall not have been surrendered, all dividends, if any, with respect to such shares shall cease to accrue after the Redemption Date, such shares shall not thereafter be transferred on the Corporation's books, and the rights of all of the holders of such shares with respect to such shares shall terminate after the Redemption Date, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate(s) therefor.

(f) Deposit of Redemption Price. On or prior to the respective Redemption Date, the Corporation may, at its option, deposit with a bank or trust company in California having a capital and surplus of at least One Hundred Million Dollars (\$100,000,000), as a trust fund, a sum equal to the aggregate Redemption Price for all shares of Series B1 Preferred Stock called for redemption and not yet redeemed on such Redemption Date, with irrevocable instructions and authority to the bank or trust company to pay, on or after such Redemption Date, the Redemption Price to the respective holders upon the surrender of their share certificates. Upon and after the date of such deposit, the shares so called for redemption shall be redeemed. The deposit shall constitute full payment of the shares to their respective holders, and upon and after the date of the deposit, the shares shall be deemed to be no longer outstanding, and the holders thereof shall cease to be shareholders with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the Redemption Price for the shares, without interest, upon surrender of their certificates therefor. Any funds so deposited and unclaimed at the end of one (1) year from the Redemption Date shall be released or repaid to the Corporation, after which time the holders of shares called for redemption who have not claimed such funds shall be entitled to receive payment of the Redemption Price only from the Corporation.

(2) Mandatory Redemption of Series B Preferred Stock.

(a) After full payment of amounts owed to the holders of Series B1 Preferred Stock under Section IV G.(1) and subject to any liquidation preference rights which may have been previously invoked under Section IV B. hereof, to the extent that any outstanding shares of Series B Preferred Stock have not been redeemed or converted into Common Stock prior to the fifth anniversary of the Issuance Date, if the Corporation shall receive, on a date at least three (3) months but not more than six (6) months prior to the fifth anniversary of the Issuance Date, a written request signed by the holders of at least two-thirds (2/3) of the then outstanding shares of Series B Preferred Stock for redemption of the Series B Preferred Stock under this Section IV G.(2), then the Corporation shall redeem, starting thirty (30) days after the redemption in full of

the Series B1 Preferred Stock (for purposes of this Section IV G.(2), the date on which the thirty days is fixed is the "First Redemption Date"), a number of shares of Series B Preferred Stock equal to one-third (1/3rd) of the shares of Series B Preferred Stock that are outstanding on the First Redemption Date, one year after such First Redemption Date, an additional one-third (1/3rd) of the shares of Series B Preferred Stock that are outstanding on the First Redemption Date, and two years after such First Redemption Date, all then remaining outstanding shares of Series B Preferred Stock (each anniversary after the First Redemption Date also a "Redemption Date"); provided, however, that the Corporation, at its sole option and discretion, to the extent permitted by law, may redeem a greater number (including all) of the outstanding shares of Series B Preferred Stock, at the "Redemption Price" set forth below in this Section IV G.(2) at any time after the First Redemption Date. Redemption shall be made from any source of funds legally available therefor at the Redemption Price therefor described in this Section IV G.(2), until all outstanding shares of Series B Preferred Stock have been redeemed or converted to Common Stock as provided in Section IV D. The Redemption Price for each share of Series B Preferred Stock shall be the Series B Preference Amount, less the amount of any cash dividends previously paid to the holders of Series B Preferred Stock.

If upon any Redemption Date scheduled under this Section IV G.(2) for the redemption of Series B Preferred Stock, (i) the funds and assets of the Corporation legally available to redeem such Series B Preferred Stock shall be insufficient to redeem all shares of Series B Preferred Stock then scheduled for redemption or (ii) the Corporation shall for any reason fail to pay the Redemption Price in full on all shares then scheduled for redemption, then such shall be an "Event of Default." Upon any Event of Default,

(i) such unredeemed shares shall be redeemed (together with any other shares of Series B Preferred Stock then scheduled to be redeemed) at the next such scheduled Redemption Date to the full extent of legally available funds of the Corporation at such time. Series B Preferred Stock subject to redemption hereunder but which has not been redeemed due to insufficient legally available funds and assets of the Corporation shall continue to be outstanding and entitled to all dividend, liquidation, conversion and other rights, preferences, privileges and restrictions of the Series B Preferred Stock until such shares have been converted or redeemed; and

(ii) notwithstanding anything in this Section IV G.(2) to the contrary, the Corporation shall not be obligated to undertake any redemption unless immediately following any such redemption, the Corporation shall have outstanding one (1) or more shares of one (1) or more classes or series of stock, which share, or shares together, shall have full voting rights.

(b) Partial Redemption. No redemption shall be made under this Section IV G.(2) of only a part of the then outstanding shares of Series B Preferred Stock, unless the Corporation shall effect such redemption pro rata among all holders of the then outstanding Series B Preferred Stock according to the number of shares held by each holder thereof on the applicable Redemption Date.

(c) Redemption Notice. At least twenty (20) but no more than sixty (60) days prior to each Redemption Date, the Corporation shall mail written notice, postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on

which notice is given) of the Series B Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder or given by the holder to the Corporation for the purpose of notice or, if no such address appears or is given, at the place where the principal executive office of the Corporation is located, notifying such holder of the redemption to be effected, specifying the subsection hereof under which such redemption is being effected, the Redemption Date, the applicable Redemption Price, the number of such holder's shares of Series B Preferred Stock to be redeemed, the place at which payment may be obtained and the date on which such holder's conversion rights (as set forth in Section IV D.) as to such shares terminate (which date shall in no event be earlier than three (3) days prior to the Redemption Date) and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the certificate or certificates representing the shares to be redeemed (the "Redemption Notice").

(d) Surrender of Certificates. On or before each designated Redemption Date, each holder of Series B Preferred Stock to be redeemed shall (unless such holder has previously exercised his right to convert such shares of Series B Preferred Stock into Common Stock as provided in Section IV. D. above), surrender the certificate(s) representing such shares of Series B Preferred Stock to be redeemed to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate(s) as the owner thereof, and each surrendered certificate shall be cancelled and retired. If less than all of the shares represented by such certificate are redeemed, then the Corporation shall promptly issue a new certificate representing the unredeemed shares.

(e) Effect of Redemption. If (a) the Redemption Notice shall have been duly given, and (b) on the Redemption Date the Redemption Price is either paid or made available for payment through the deposit arrangements specified in subsection G.(2)(f) below, then notwithstanding that the certificates evidencing any of the shares of Series B Preferred Stock called for redemption shall not have been surrendered, all dividends, if any, with respect to such shares shall cease to accrue after the Redemption Date, such shares shall not thereafter be transferred on the Corporation's books, and the rights of all of the holders of such shares with respect to such shares shall terminate after the Redemption Date, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate(s) therefor.

(f) Deposit of Redemption Price. On or prior to the respective Redemption Date, the Corporation may, at its option, deposit with a bank or trust company in California having a capital and surplus of at least One Hundred Million Dollars (\$100,000,000), as a trust fund, a sum equal to the aggregate Redemption Price for all shares of Series B Preferred Stock called for redemption and not yet redeemed on such Redemption Date, with irrevocable instructions and authority to the bank or trust company to pay, on or after such Redemption Date, the Redemption Price to the respective holders upon the surrender of their share certificates. Upon and after the date of such deposit, the shares so called for redemption shall be redeemed. The deposit shall constitute full payment of the shares to their respective holders, and upon and after the date of the deposit, the shares shall be deemed to be no longer outstanding, and the holders thereof shall cease to be shareholders with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the

Redemption Price for the shares, without interest, upon surrender of their certificates therefor. Any funds so deposited and unclaimed at the end of one (1) year from the Redemption Date shall be released or repaid to the Corporation, after which time the holders of shares called for redemption who have not claimed such funds shall be entitled to receive payment of the Redemption Price only from the Corporation.

(3) Mandatory Redemption of Series A Preferred Stock.

(a) After full payment of amounts owed to the holders of Series B1 Preferred Stock and Series B Preferred Stock under Section IV G.(1) and (2) above, and subject to any liquidation preference rights which may have been previously invoked under Section IV B. hereof, to the extent that any outstanding shares of Series A Preferred Stock have not been redeemed or converted into Common Stock prior to the fifth anniversary of the Issuance Date, if the Corporation shall receive, on a date at least three (3) months but not more than six (6) months prior to the fifth anniversary of the Issuance Date, a written request signed by the holders of at least a majority of the then outstanding shares of Series A Preferred Stock for redemption of the Series A Preferred Stock under this Section IV G.(3), then the Corporation shall redeem, starting thirty (30) days after the redemption in full of the Series B Preferred Stock (for purposes of this Section IV G.(3), the date on which the thirty days is fixed is the "First Redemption Date"), a number of shares of Series A Preferred Stock equal to one-third (1/3rd) of the shares of Series A Preferred Stock that are outstanding on the First Redemption Date, one year after such First Redemption Date, an additional one-third (1/3rd) of the shares of Series A Preferred Stock that are outstanding on the First Redemption Date, and two years after such First Redemption Date, all then remaining outstanding shares of Series A Preferred Stock (each anniversary after the First Redemption Date also a "Redemption Date"); provided, however, that the Corporation, at its sole option and discretion, to the extent permitted by law, may redeem a greater number (including all) of the outstanding shares of Series A Preferred Stock, at the "Redemption Price" set forth below in this Section IV G.(3) at any time after the First Redemption Date. Redemption shall be made from any source of funds legally available therefor at the Redemption Price therefor described in this Section IV G.(3), until all outstanding shares of Series A Preferred Stock have been redeemed or converted to Common Stock as provided in Section IV D. The Redemption Price for each share of Series A Preferred Stock shall be the Series A Preference Amount, less the amount of any cash dividends previously paid to the holders of Series A Preferred Stock.

If upon any Redemption Date scheduled under this Section IV G.(3) for the redemption of Series A Preferred Stock, (i) the funds and assets of the Corporation legally available to redeem such stock shall be insufficient to redeem all shares of Series A Preferred Stock then scheduled for redemption or (ii) the Corporation shall for any reason fail to pay the Redemption Price in full on all shares then scheduled for redemption, then such shall be an "Event of Default." Upon any Event of Default,

(i) such unredeemed shares shall be redeemed (together with any other shares of Series A Preferred Stock then scheduled to be redeemed) at the next such scheduled Redemption Date to the full extent of legally available funds of the Corporation at such time. Series A Preferred Stock subject to redemption hereunder but which has not been redeemed due to insufficient legally available funds and assets of the Corporation shall continue

to be outstanding and entitled to all dividend, liquidation, conversion and other rights, preferences, privileges and restrictions of the Series A Preferred Stock until such shares have been converted or redeemed; and

(ii) notwithstanding anything in this Section IV G.(3) to the contrary, the Corporation shall not be obligated to undertake any redemption unless immediately following any such redemption, the Corporation shall have outstanding one (1) or more shares of one (1) or more classes or series of stock, which share, or shares together, shall have full voting rights.

(b) Partial Redemption. No redemption shall be made under this Section IV G.(3) of only a part of the then outstanding shares of Series A Preferred Stock, unless the Corporation shall effect such redemption pro rata among all holders of the then outstanding Series A Preferred Stock according to the number of shares held by each holder thereof on the applicable Redemption Date.

(c) Redemption Notice. At least twenty (20) but no more than sixty (60) days prior to each Redemption Date, the Corporation shall mail written notice, postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder or given by the holder to the Corporation for the purpose of notice or, if no such address appears or is given, at the place where the principal executive office of the Corporation is located, notifying such holder of the redemption to be effected, specifying the subsection hereof under which such redemption is being effected, the Redemption Date, the applicable Redemption Price, the number of such holder's shares of Series A Preferred Stock to be redeemed, the place at which payment may be obtained and the date on which such holder's conversion rights (as set forth in Section IV D.) as to such shares terminate (which date shall in no event be earlier than three (3) days prior to the Redemption Date) and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the certificate or certificates representing the shares to be redeemed (the "Redemption Notice").

(d) Surrender of Certificates. On or before each designated Redemption Date, each holder of Series A Preferred Stock to be redeemed shall (unless such holder has previously exercised his right to convert such shares of Series A Preferred Stock into Common Stock as provided in Section IV. D. above), surrender the certificate(s) representing such shares of Series A Preferred Stock to be redeemed to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate(s) as the owner thereof, and each surrendered certificate shall be cancelled and retired. If less than all of the shares represented by such certificate are redeemed, then the Corporation shall promptly issue a new certificate representing the unredeemed shares.

(e) Effect of Redemption. If (a) the Redemption Notice shall have been duly given, and (b) on the Redemption Date the Redemption Price is either paid or made available for payment through the deposit arrangements specified in subsection G.(3)(f) below, then notwithstanding that the certificates evidencing any of the shares of Series A Preferred Stock called for redemption shall not have been surrendered, all dividends, if any, with respect to such

shares shall cease to accrue after the Redemption Date, such shares shall not thereafter be transferred on the Corporation's books and the rights of all of the holders of such shares with respect to such shares shall terminate after the Redemption Date, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate(s) therefor.

(f) Deposit of Redemption Price. On or prior to the respective Redemption Date, the Corporation may, at its option, deposit with a bank or trust company in California having a capital and surplus of at least One Hundred Million Dollars (\$100,000,000), as a trust fund, a sum equal to the aggregate Redemption Price for all shares of Series A Preferred Stock called for redemption and not yet redeemed on such Redemption Date, with irrevocable instructions and authority to the bank or trust company to pay, on or after such Redemption Date, the Redemption Price to the respective holders upon the surrender of their share certificates. Upon and after the date of such deposit, the shares so called for redemption shall be redeemed. The deposit shall constitute full payment of the shares to their respective holders, and upon and after the date of the deposit, the shares shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the Redemption Price for the shares, without interest, upon surrender of their certificates therefor. Any funds so deposited and unclaimed at the end of one (1) year from the Redemption Date shall be released or repaid to the Corporation, after which time the holders of shares called for redemption who have not claimed such funds shall be entitled to receive payment of the Redemption Price only from the Corporation.

H. Residual Rights.

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

(2) Residual Rights. All rights accruing to the outstanding shares of the Corporation not otherwise expressly provided for in these Second Amended and Restated Articles of Incorporation shall be vested in the Common Stock.

ARTICLE V

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

The Corporation is authorized to provide indemnification of agents (as provided in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its shareholders through Bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits of excess indemnification set forth in Section 204 of the California Corporations Code.

Any repeal or modification of the foregoing paragraph 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 amendment and restatement of the Articles of Incorporation of the Corporation have been duly approved by the Board of Directors of the Corporation.

4. The foregoing amendment and restatement of the Articles of Incorporation of the Corporation has been duly approved by the required vote of the shareholders of the Corporation in accordance with Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of Common Stock of the Corporation is 3,144,089. The total number of outstanding shares of Preferred Stock is 3,755,824 Series A Preferred Stock shares and 10,000,000 Series B Preferred Stock shares. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than: (i) fifty percent (50%) of the Common Stock (voting separately), (ii) a majority of the Series A Preferred Stock (voting separately), (iii) two thirds (2/3) of the Series B Preferred Stock (voting separately), and (iv) fifty percent (50%) of the Common Stock, Series A Preferred Stock and Series B Preferred Stock voting together, with the Series A Preferred Stock and Series B Preferred Stock voting on an as converted to Common Stock basis.

The undersigned certify under penalty of perjury that the foregoing is true and correct of their own personal knowledge.

Executed as of May 26, 2005, at San Jose, California.



Debbie Miller
Chief Executive Officer



David Hubb
Assistant Secretary