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

2181307

AMENDED AND RESTATED ARTICLES OF INCORPORATION AUG 24 2005

OF

ATTUNE SYSTEMS, INC.

The undersigned, Alan Kessler and Francesco Lacapra, certify that:

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

ARTICLE I

The name of the Corporation is Attune Systems, Inc. (hereinafter, the "Corporation").

ARTICLE II

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

ARTICLE III

A. Effective immediately upon the filing of this Amended and Restated Articles of Incorporation, the following events shall occur with respect to the Corporation's then issued and outstanding capital stock:

1. Reverse Stock Split. Every four (4) shares of common stock of the Corporation issued and outstanding at such time shall be, and hereby are, changed and combined into one (1) fully paid and non-assessable share of common stock of the Corporation and every four (4) shares of preferred stock of the Corporation issued and outstanding at such time shall be, and hereby are, changed and combined into one (1) fully paid and non-assessable share of preferred stock of the Corporation (the "Reverse Stock Split"). Each outstanding stock certificate of the Corporation which, immediately prior to the time this Amended and Restated Articles of Incorporation becomes effective, represented one or more shares of common stock or preferred stock of the Corporation, as the case may be, shall thereafter be deemed to represent the appropriate number of shares of common stock or preferred stock of the Corporation, as the case may be, taking into account the Reverse Stock Split, until such stock certificate is exchanged for a new stock certificate reflecting the appropriate number of shares resulting from the Reverse Stock Split. Any fractional shares resulting from the Reverse Stock Split shall be rounded down to the nearest whole share.

2. Reclassification. After giving effect to the Reverse Stock Split referenced in Section A.1 above, each share of Series 1 Preferred Stock issued and outstanding at such time shall be, and hereby is, changed and reclassified into one (1) fully paid and non-assessable share of Series A Preferred Stock (the "Reclassification"). Each outstanding stock certificate of the Corporation which, immediately prior to the time this Amended and Restated Articles of Incorporation becomes effective, represented shares of Series 1 Preferred Stock shall thereafter represent shares of Series A Preferred Stock.

B. The Corporation is authorized to issue two classes of shares to be designated respectively Preferred Stock ("Preferred Stock") and Common Stock ("Common Stock"). The total number of shares of capital stock that the Corporation is authorized to issue is 64,450,000. The total number of shares of Common Stock the Corporation shall have authority to issue is 35,000,000 with no par value. The total number of shares of Preferred Stock the Corporation shall have authority to issue is 29,450,000 with no par value.

C. The Preferred Stock shall be divided into series. The first series shall consist of 6,800,000 shares and is designated "Series A Preferred Stock." The second series shall consist of 22,650,000 shares and is designated "Series B Preferred Stock."

D. The powers, preferences, rights, privileges, restrictions and other matters relating to the Series A Preferred Stock and the Series B Preferred Stock are as follows (after taking into account the Reverse Stock Split and the Reclassification):

1. Dividends.

(a) The holders of Series B Preferred Stock shall be entitled to receive dividends at the rate of \$0.048 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar events with respect to such shares) per annum, payable out of funds legally available therefor and in preference to any distribution of dividends to the holders of Series A Preferred Stock and Common Stock. Such dividends shall be payable only when, as, and if declared by the Board of Directors, shall not be cumulative, and no right shall accrue to holders of Series B Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior year, nor shall any undeclared or unpaid dividend bear or accrue interest. No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid on any Series A Preferred Stock or Common Stock of the Corporation during any fiscal year of the Corporation unless and until dividends in the amount of \$0.048 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar events with respect to such shares) on the Series B Preferred Stock shall have been paid, or declared and set apart, during that fiscal year pursuant to this Section D.1(a).

(b) Thereafter, the holders of Series A Preferred Stock shall be entitled to receive dividends at the rate of \$0.3072 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar events with respect to such shares) per annum, payable out of funds legally available therefor and in preference to any distribution of dividends to the holders of Common Stock. Such dividends shall be payable only when, as, and if declared by the Board of Directors, shall not be cumulative, and no right shall accrue to holders of Series A Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior year, nor

shall any undeclared or unpaid dividend bear or accrue interest. No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid on any Common Stock of the Corporation during any fiscal year of the Corporation unless and until dividends in the amount of \$0.3072 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar events with respect to such shares) on the Series A Preferred Stock shall have been paid, or declared and set apart, during that fiscal year pursuant to this Section D.1(b). Thereafter, the holders of Common Stock, Series A Preferred Stock and Series B Preferred Stock shall be entitled, if and when declared by the Board of Directors, to share equally in dividends out of assets of the Corporation legally available therefor, with Series A Preferred Stock and Series B Preferred Stock being treated on an as-converted to Common Stock basis.

(c) In the event of a conversion of the Series A Preferred Stock and/or Series B Preferred Stock pursuant to Section 3 hereof, any declared and unpaid dividends shall be paid at the election of the holder in cash or Common Stock at its then fair market value, as determined by the Board of Directors.

(d) Each holder of Preferred Stock shall be deemed to have consented, for purposes of Sections 502 and 503 of the General Corporation Law of the State of California, to distributions by the Corporation in connection with the repurchase of shares of Common Stock at cost or below fair market value issued to or held by certain employees of, or consultants to, the Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase; provided, that a majority of the Board of Directors has approved any such repurchase under this subsection (d).

2. Liquidation Preference. In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation or other event set forth in subsection (d) below (referred to collectively as a "Liquidating Event"), the rights of holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock of the Corporation shall be as follows:

(a) Subject to the rights of future series of the Corporation's Preferred Stock, in the event of any Liquidating Event, the holders of Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Series A Preferred Stock, Common Stock or other junior equity security by reason of their ownership thereof, an amount per share equal to the sum of (i) \$0.60 for each outstanding share of Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations or similar events with respect to such shares, the "Series B Issue Price") and (ii) an amount equal to all declared but unpaid dividends on each share of Series B Preferred Stock then held by them (the "Series B Liquidation Preference"). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full per share Series B Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock, in an amount equal to the proportion that the product of the Series B Liquidation Preference of each share of Series B Preferred Stock and the number of such shares owned by each such holder bears to the total Series B Liquidation Preference described in this Section D.2(a).

(b) Subject to the rights of the Series B Preferred Stock and future series of the Corporation's Preferred Stock, in the event of any Liquidating Event, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock or other junior equity security by reason of their ownership thereof, an amount per share equal to the sum of (i) \$3.84 for each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations or similar events with respect to such shares, the "Series A Issue Price") and (ii) an amount equal to all declared but unpaid dividends on each share of Series A Preferred Stock then held by them (the "Series A Liquidation Preference"). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full per share Series A Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock, in an amount equal to the proportion that the product of the Series A Liquidation Preference of each share of Series A Preferred Stock and the number of such shares owned by each such holder bears to the total Series A Liquidation Preference described in this Section D.2(a).

(c) After the distributions described in subsections (a) and (b) above have been paid, the remaining assets of the Corporation legally available for distribution to shareholders shall be distributed among the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series A Preferred Stock and Series B Preferred Stock).

(d) For purposes of this Section D.2, (i) any acquisition of the Corporation by means of a merger, consolidation, sale of the Corporation's stock, or other reorganization of the Corporation (or a series of such transactions which are related) (other than a transaction solely to effect the reincorporation of the Corporation in another state or jurisdiction), if after giving effect to such merger, consolidation or other reorganization of the Corporation (or series of such transactions which are related), the shareholders of the Corporation immediately prior to such merger, consolidation or other reorganization do not represent more than fifty percent (50%) of the voting power (assuming the exercise of all outstanding options and warrants and the conversion of all Convertible Securities (as defined below)) of the surviving or resulting entity after such merger, consolidation or other reorganization or (ii) the sale of all or substantially all of the assets of the Corporation, shall be treated as a Liquidating Event and shall entitle the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock to receive at the closing cash, securities or other property as specified in Sections D.2(a), D.2(b) and D.2(c) hereof. "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock, Series A Preferred Stock and Series B Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(e) Whenever the distribution provided for in this Section D.2 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined pursuant to Section D.2(f) below.

(f) In any of the events specified in this Section D.2, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

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

(A) 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 system over the thirty-day period ending three (3) days prior to the closing;

(B) If actively traded over-the-counter and not reported as a NASDAQ National Market Security, the value shall be deemed to be the average of the closing bid prices over the thirty-day period ending three (3) days prior to the closing; and

(C) 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; provided, however, if the holders of a majority of the outstanding Preferred Stock object to such valuation then the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of not less than a majority of the outstanding shares of Preferred Stock, voting as a class.

(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) shall be to make an appropriate discount from the market value determined as above in (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

(g) In the event of a liquidation of the Corporation, the liquidation distributions described in Sections D.2(a) and D.2(c) hereof shall be paid in cash on the date fixed for such liquidation. In the event of the sale of all or substantially all of the Corporation's assets, or a merger, consolidation, sale of the Corporation's stock or other reorganization of the Corporation (or series of such transactions which are related) (other than a transaction solely to effect the reincorporation of the Corporation in another state or jurisdiction), the liquidation distributions described in Sections D.2(a) and D.2(c) hereof shall be paid in cash and/or the consideration received by the holders of Common Stock, in the same relative proportion as received by the holders of Common Stock, on the date of the closing of such transaction (or series of related transactions).

(h) In the event of a transaction to be treated as a Liquidating Event pursuant to this Section D.2, the Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the

impending transactions and the provisions of this Section D.2, and the Corporation shall thereafter give such holders prompt notice of any material changes to such terms. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of at least a majority of the shares of Preferred Stock, voting as a single class.

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

(a) Right To Convert. Subject to subsections (f) and (g), (i) each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Issue Price by the Series A Conversion Price in effect at the time that the certificate is surrendered for conversion for the Series A Preferred Stock (the "Series A Conversion Price"); and (ii) each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B Issue Price by the Series B Conversion Price in effect at the time that the certificate is surrendered for conversion for the Series B Preferred Stock (the "Series B Conversion Price" and together with the Series A Conversion Price, the "Conversion Prices"). The initial Series A Conversion Price per share for shares of Series A Preferred Stock shall be the Series A Issue Price, and the initial Series B Conversion Price per share for shares of Series B Preferred Stock shall be the Series B Issue Price, subject in each case to adjustment as set forth in subsections (e) and (g).

(b) Automatic Conversion. Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective Series A Conversion Price and Series B Conversion Price, respectively, immediately upon the earlier of (i) the date specified by vote or written consent or agreement of the holders of a majority of the shares of Preferred Stock then outstanding and (ii) the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), other than a registration relating solely to a transaction under Rule 145 under the Securities Act or to an employee benefit plan of the Corporation, at a public offering with proceeds to the Corporation (after underwriters' discounts and expenses) of at least \$15,000,000 at a price per share of Common Stock equal to at least ten (10) times the Series B Issue Price (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar events with respect to such shares) then in effect.

(c) Mechanics of Conversion.

(i) Before any holder of Preferred Stock (a "Preferred Holder") shall be entitled voluntarily to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such

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

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, or any event or transaction that would constitute a Liquidating Event of the Corporation as provided in Section D.2(d) above, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock and/or Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering or the closing of such other event or transaction, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock and/or Series B Preferred Stock shall not be deemed to have converted such Series A Preferred Stock and/or Series B Preferred Stock until immediately prior to the closing of such sale of securities or the closing of such other event or transaction, as the case may be.

(d) Special Mandatory Conversion Into Common Stock Prior to the Lapse of the Pre-Series B Notice Period.

(i) Prior to the lapse of the Pre-Series B Notice Period (as defined below), shares of Series A Preferred Stock (including all warrants, options and convertible securities exercisable or convertible for the issuance thereof) held by a holder who does not exercise at least seventy-five percent (75%) of its Pre-Series B Purchase Right (as defined below) shall convert automatically into shares of Common Stock at the then-effective Series A Conversion Price (or warrants, options or convertible securities exercisable or convertible for the issuance of shares of Common Stock at the then-effective Series A Conversion Price) in accordance with the terms of this Section D.3(d). Each holder of Series A Preferred Stock shall be entitled to receive notice (the "Pre-Series B Notice"), in the event that the Corporation shall propose to sell after August 1, 2005, the next new series of Preferred Stock of the Corporation after the Series A Preferred Stock ("Pre-Series B Equity Securities"), of its right to purchase its "Pre-Series B pro rata participation" (as described below) of such Pre-Series B Equity Securities (the "Pre-Series B Purchase Right"). The Pre-Series B Notice shall state (A) the Corporation's bona fide intention to sell such Pre-Series B Equity Securities, (B) the number of Pre-Series B Equity Securities proposed to be sold, (C) the per share price of the Pre-Series B Equity securities proposed to be sold, (D) other material terms of the offering, (E) the maximum number of Pre-Series B Equity Securities which each holder may purchase, assuming pro rata participation and (F) the anticipated closing date of the sale.

(ii) For purposes of this Section D.3(d), each holder of Series A Preferred Stock's "Pre-Series B pro rata participation" shall be calculated, and each holder of Series A Preferred Stock shall have the right to purchase, that number of shares of Pre-Series B Equity Securities determined by multiplying the total number of Pre-Series B Equity Securities proposed to be sold by the Corporation by a fraction, the numerator of which is the number of shares of Common Stock held by such holder of Series A Preferred Stock as of the date of the Pre-Series B Notice (assuming full conversion and exercise of all convertible or exercisable securities held by such holder), and the denominator of which is the total number of shares of Common Stock of the Corporation outstanding (assuming full conversion and exercise of all convertible or exercisable securities) on the date of the Pre-Series B Notice. A holder of Series A Preferred Stock shall exercise its Pre-Series B Purchase Right by providing the Corporation with written notice of exercise within three (3) business days after the Notice is given (the "Pre-Series B Notice Period"), unless such date is extended by the affirmative vote of holders of a majority in interest of the outstanding shares of Series A Preferred Stock.

(iii) The shares of Series A Preferred Stock (including all warrants, options and convertible securities exercisable or convertible for the issuance thereof) held by holders who have not elected to exercise at least seventy-five percent (75%) of their Pre-Series B Purchase Right pursuant to Section D.3(d)(ii) hereof shall be automatically converted, without any further action by such holders of Series A Preferred Stock or the Corporation, into shares of Common Stock at the then-effective Series A Conversion Price (or warrants, options or convertible securities exercisable or convertible for the issuance of shares of Common Stock at the then-effective Series A Conversion Price) upon the first closing of the sale of such Pre-Series B Equity Securities following the expiration of the Pre-Series B Notice Period, provided such holders of Series A Preferred Stock shall retain any rights they may have with respect to dividends declared but unpaid on such Series A Preferred Stock prior to such date. In the event that any holder of Series A Preferred Stock presents such holder's Series A Preferred Stock certificate (or warrants, options or convertible securities exercisable or convertible for the issuance thereof) for surrender to the Corporation or its transfer agent upon such conversion into Common Stock, a certificate for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were converted (or warrants, options or convertible securities exercisable or convertible for the issuance of shares of Common Stock at the then-effective Series A Conversion Price) on such conversion date will be promptly issued and delivered to such holder.

(iv) Notwithstanding the foregoing Pre-Series B Equity Securities shall not include, the Corporation shall not be required to send the Pre-Series B Notice with respect to the issuance of, and this Section D.3(d) and the Pre-Series B Purchase Right shall not apply to:

(A) Sale and issuance of the Series A Preferred Stock and Common Stock issuable upon the conversion thereof;

(B) Any shares, warrants or options to purchase shares of the Corporation's Stock issuable upon exercise of options or warrants, issued pursuant to any arrangement

approved by the Board of Directors, to employees, officers and directors of, or consultants, advisors or other persons performing services for, the Corporation:

(C) Shares of the Corporation's Common Stock or Preferred Stock of any series issued in connection with any stock split, stock dividend, combination or recapitalization of the Corporation;

(D) Common Stock issued upon exercise of warrants, options or convertible securities if the issuance of such warrants, options or convertible securities was a result of the exercise of Pre-Series B Purchase Rights;

(E) Any shares issued or issuable in connection with adjustment of the Series A Conversion Price;

(F) Shares of the Corporation's Common Stock or Preferred Stock of any series issued in connection with any acquisition of another company by the Corporation;

(G) Any shares issued to financial institutions or lenders in connection with the extension of credit to the Corporation (including loans, lines of credit, guarantees or other financing arrangements) or in connection with the lease of equipment, personal property or real property and in each case for other than equity financing purposes;

(H) Any shares issued or issuable to lessors, recruiters, public relations agencies or similar individuals or entities for other than equity financing purposes;

(I) Any shares issued or issuable in connection with transactions determined by the Corporation's Board of Directors to be strategic; or

(J) Securities sold to the public in an offering pursuant to a registration statement filed with the Securities and Exchange Commission under the Act.

(c) Special Mandatory Conversion Into Common Stock After the Lapse of the Pre-Series B Notice Period.

(i) After the lapse of the Pre-Series B Notice Period, shares of Series A Preferred Stock (including all warrants, options and convertible securities exercisable or convertible for the issuance thereof) held by a holder who does not exercise in full its Purchase Right (as defined below) shall convert automatically into shares of Common Stock at the then-effective Series A Conversion Price (or warrants, options or convertible securities exercisable or convertible for the issuance of shares of Common Stock at the then-effective Series A Conversion Price) in accordance with the terms of this Section D.3(c). Each holder of Series A Preferred Stock shall be entitled to receive notice (the "Notice"), in the event that the Corporation shall propose, after the lapse of the Pre-Series B Notice Period, to sell any securities at a price less than the Series B Conversion Price in effect at the time and having voting rights in the election of the Corporation's Board of Directors ("Equity Securities"), of its right to purchase its "pro rata participation" (as described below) of such Equity Securities (the "Purchase Right"). The Notice shall state (A) the Corporation's bona fide intention to sell such Equity Securities, (B) the number

of Equity Securities proposed to be sold, (C) the per share price of the Equity securities proposed to be sold, (D) other material terms of the offering, and (E) the maximum number of Equity Securities which each holder may purchase, assuming pro rata participation.

(ii) For purposes of this Section D.3(c), each holder of Series A Preferred Stock's "pro rata participation" shall be calculated, and each holder of Series A Preferred Stock shall have the right to purchase, that number of shares of Equity Securities determined by multiplying the total number of Equity Securities proposed to be sold by the Corporation by a fraction, the numerator of which is the number of shares of Common Stock held by such holder of Series A Preferred Stock as of the date of the Notice (assuming full conversion and exercise of all convertible or exercisable securities held by such holder), and the denominator of which is the total number of shares of Common Stock of the Corporation outstanding (assuming full conversion and exercise of all convertible or exercisable securities) on the date of the Notice. A holder of Series A Preferred Stock shall exercise its Purchase Right by providing the Corporation with written notice of exercise within three (3) business days after the Notice is given (the "Notice Period"), unless such date is extended by the affirmative vote of holders of a majority in interest of the outstanding shares of Series A Preferred Stock.

(iii) The shares of Series A Preferred Stock (including all warrants, options and convertible securities exercisable or convertible for the issuance thereof) held by holders who have not elected to exercise in full (A) their Purchase Right minus (B) the difference, to the extent such number is a positive number, between (1) the aggregate number of shares of Pre-Series B Equity Securities held by such holder and (2) such holder's Pre-Series B Purchase Right (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar events with respect to such shares), pursuant to Section D.3(c)(ii) hereof shall be automatically converted, without any further action by such holders of Series A Preferred Stock or the Corporation, into shares of Common Stock at the then-effective Series A Conversion Price (or warrants, options or convertible securities exercisable or convertible for the issuance of shares of Common Stock at the then-effective Series A Conversion Price) upon the first closing of the sale of such Equity Securities following the expiration of the Notice Period, provided such holders of Series A Preferred Stock shall retain any rights they may have with respect to dividends declared but unpaid on such Series A Preferred Stock prior to such date. In the event that any holder of Series A Preferred Stock presents such holder's Series A Preferred Stock certificate (or warrants, options or convertible securities exercisable or convertible for the issuance thereof) for surrender to the Corporation or its transfer agent upon such conversion into Common Stock, a certificate for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were converted (or warrants, options or convertible securities exercisable or convertible for the issuance of shares of Common Stock at the then-effective Series A Conversion Price) on such conversion date will be promptly issued and delivered to such holder.

(iv) Notwithstanding the foregoing, Equity Securities shall not include, the Corporation shall not be required to send the Notice with respect to the issuance of, and this Section D.3(c) and the Purchase Right shall not apply to:

(A) Sale and issuance of the Series A Preferred Stock and Common Stock issuable upon the conversion thereof;

(B) Any shares, warrants or options to purchase shares of the Corporation's Stock issuable upon exercise of options or warrants, issued pursuant to any arrangement approved by the Board of Directors, to employees, officers and directors of, or consultants, advisors or other persons performing services for, the Corporation;

(C) Shares of the Corporation's Common Stock or Preferred Stock of any series issued in connection with any stock split, stock dividend, combination or recapitalization of the Corporation;

(D) Common Stock issued upon exercise of warrants, options or convertible securities if the issuance of such warrants, options or convertible securities was a result of the exercise of Purchase Rights;

(E) Any shares issued or issuable in connection with adjustment of the Conversion Prices;

(F) Shares of the Corporation's Common Stock or Preferred Stock of any series issued in connection with any acquisition of another company by the Corporation;

(G) Any shares issued to financial institutions or lenders in connection with the extension of credit to the Corporation (including loans, lines of credit, guarantees or other financing arrangements) or in connection with the lease of equipment, personal property or real property and in each case for other than equity financing purposes;

(H) Any shares issued or issuable to lessors, recruiters, public relations agencies or similar individuals or entities for other than equity financing purposes;

(I) Any shares issued or issuable in connection with transactions determined by the Corporation's Board of Directors to be strategic; or

(J) Securities sold to the public in an offering pursuant to a registration statement filed with the Securities and Exchange Commission under the Act.

(f) Adjustments to Conversion Price for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the Corporation at any time or from time to time after the Original Issue Date (defined below) shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Prices in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any dividend on the

Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock. "Original Issue Date" shall mean August 25, 2005.

(g) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section D.3(f) hereof or a merger or other reorganization referred to in Section D.2(d) hereof), the Conversion Prices then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock and Series B Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock and Series B Preferred Stock immediately before that change.

(h) No Impairment. The Corporation will not, except by a properly approved amendment of its Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action approved by the holders of a majority of the outstanding shares of the Preferred Stock, voting as a class, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all of the provisions of this Section D.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 Series A Preferred Stock and Series B Preferred Stock against impairment.

(i) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Prices pursuant to this Section D.3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each Preferred Holder a certificate executed by the Corporation's President or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any Preferred Holder, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Prices at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred Stock and/or Series B Preferred Stock.

(j) Notices of Record Date. In the event that the 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 effect a Liquidating Event; then, in connection with each such event, the Corporation shall send to the Preferred Holders:

(A) At least fifteen (15) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above, and

(B) 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).

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

(l) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of 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 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 Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, obtaining the requisite shareholder approval of any necessary amendment to these Amended and Restated Articles of Incorporation.

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

(n) Notices. Any notice required by the provisions of this Section D.3 to be given to the Preferred Holders shall be deemed given five (5) days after the date mailed if deposited in the

United States mail, postage prepaid, and addressed to each holder of record at the holder's address appearing on the books of the Corporation.

4. Voting Rights; Directors.

(a) Subject to Section D.4(b) below, each Preferred Holder shall have the right to one vote for each share of Common Stock into which such Preferred Holder's shares of Preferred Stock could be converted on the record date for the vote or written consent of shareholders. With respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock (except as otherwise provided herein or as required by law, voting together with the Common Stock as a single class), and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation. Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

(b) Designation of Directors.

(i) The holders of Preferred Stock, voting together as a separate class (the "Preferred Class"), shall be entitled to elect (and to remove, either for or without cause) two (2) members of the Board of Directors of the Corporation. The holders of Common Stock, voting separately as a single class (the "Common Class"), shall be entitled to elect one (1) member of the Board of Directors of the Corporation. All remaining members of the Board of Directors of the Corporation shall be elected by the holders of Preferred Stock and the holders of Common Stock, voting together as a single class and on an as-converted basis (the "Combined Class"). Effective immediately upon the filing of this Amended and Restated Articles of Incorporation, the number of authorized directors of the Corporation shall be seven (7).

(ii) In the case of any vacancy in the office of a director occurring among the directors elected by the Preferred Class, the Common Class or the Combined Class pursuant to subparagraph (i) of paragraph (b) of this Section D.4, the holders of the shares of the Preferred Class, the Common Class or the Combined Class, as the case may be, may elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant, as set forth above. Any director who shall have been elected by the Preferred Class, the Common Class or the Combined Class may be removed during the aforesaid term of office, whether with or without cause, by the affirmative vote of the holders of a majority of the outstanding shares of the Preferred Class, the Common Class or the Combined Class, respectively; provided, that the number of votes against removal is less than the number of votes necessary to elect that director.

5. Restrictions and Limitations.

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

- (i) Increase or decrease the total number of authorized shares of any class of stock;
- (ii) Change the authorized number of directors constituting the Board of Directors of the Corporation to a number other than seven (7);
- (iii) Effectuate any Liquidating Event;
- (iv) Declare or pay any dividend on the Preferred Stock or Common Stock;
- (v) Authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) senior to or on parity with the Series A Preferred Stock or Series B Preferred Stock as to dividend rights, redemption rights, liquidation preferences or otherwise;
- (vi) Take any action that alters or changes the rights, preferences, privileges or restrictions of any series of Preferred Stock;
- (vii) Redeem any shares of Common Stock, other than pursuant to equity incentive agreements with service providers giving the Corporation the right to repurchase shares upon the termination of services as approved by the Board of Directors;
- (viii) Amend or waive any provision of the Corporation's Articles of Incorporation or Bylaws relative to any series of Preferred Stock; or
- (ix) Effect an initial public offering of the Corporation's stock.

(b) Series B Preferred Stock. So long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority in interest of the then-outstanding shares of Series B Preferred Stock, voting together as a class:

- (i) Take any action that alters or changes the rights, preferences, privileges or restrictions of the Series B Preferred Stock; or
- (ii) Amend or waive any provision of the Corporation's Articles of Incorporation or Bylaws relative to the Series B Preferred Stock.

6. No Reissuance of Preferred Stock. No share or shares of Series A Preferred Stock or Series B 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 and, in addition, the Articles of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized stock.

7. Redemption. The Preferred Stock is not redeemable.

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

F. Indemnification of Corporate Agents. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the General Corporation Law of California) for breach of duty to the Corporation and its shareholders through bylaw provisions, agreements with agents or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the General Corporation Law of California, subject to the limits on such excess indemnification set forth in Section 204 of the General Corporation Law of California. If, after the effective date of this Article, California law is amended in a manner which permits a company to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

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

* * *

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

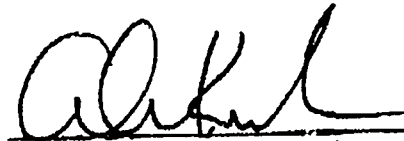
4. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares of Common Stock of the Corporation entitled to vote with respect to the foregoing amendment was 2,423,003. The total number of outstanding shares of Series I Preferred Stock of the Corporation entitled to vote with respect to the foregoing amendment was 14,743,094. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was (i) more than fifty percent (50%) of the outstanding shares of Preferred Stock and Common Stock voting together as a single class, (ii) more than fifty percent (50%) of the outstanding shares of Common Stock, voting together as a separate class and (iii) more than fifty percent (50%) of the outstanding shares of Series I Preferred Stock, voting together as a separate class.

* * *

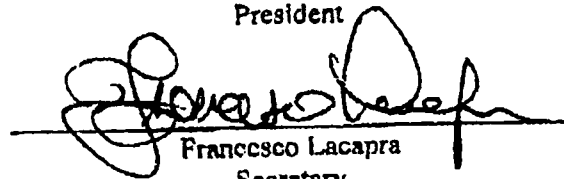
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We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: August 24, 2005.

A handwritten signature in black ink, appearing to read 'Alan Kessler', written over a horizontal line.

Alan Kessler
President

A handwritten signature in black ink, appearing to read 'Francesco Lacapra', written over a horizontal line.

Francesco Lacapra
Secretary