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

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**CERTIFICATE OF DETERMINATION OF  
PREFERENCES OF  
5% SERIES D-2 CONVERTIBLE  
PREFERRED SHARES OF  
ARBOR VITA CORPORATION  
A California Corporation**

The undersigned, Peter S. Lu and Thomas D. Recine, do hereby certify that:

A. They are the duly elected and acting President and Secretary, respectively, of ARBOR VITA CORPORATION, a California corporation (the "*Corporation*").

B. Pursuant to authority given by the Corporation's Second Amended and Restated Articles of Incorporation (the "*Articles*"), the Board of Directors of the Corporation (the "*Board*") has duly adopted the following recitals and resolutions:

WHEREAS, the Articles provide for a class of shares known as preferred stock, issuable from time to time in one or more series; and

WHEREAS, the Board is authorized to determine or alter the rights, preferences, privileges, and restrictions relating to any wholly unissued series of said preferred stock and the number of shares constituting and the designation of said series; and

WHEREAS, the Corporation has authorized Fifty Million (50,000,000) shares of common stock (the "*Common Stock*") and Thirty Million (30,000,000) shares of preferred stock; and

WHEREAS, the Corporation has previously designated One Million Nine Hundred Thirty-Nine Thousand One Hundred Thirty-One (1,939,131) shares of its preferred stock as 5% Series A Convertible Preferred Stock (the "*Series A Preferred Stock*"), pursuant to the Articles; and

WHEREAS, the Corporation has previously designated One Million Two Hundred Nineteen Thousand Fifty-Six (1,219,056) shares of its preferred stock as 5% Series B Convertible Preferred Stock (the "*Series B Preferred Stock*"), pursuant to the Articles; and

WHEREAS, the Corporation has previously designated Four Million (4,000,000) shares of its preferred stock as 9% Series C Cumulative Convertible Redeemable Preferred Stock (the "*Series C Preferred Stock*"), pursuant to the Articles; and

WHEREAS, the Corporation has previously designated Six Hundred Ninety Thousand (690,000) shares as 5% Series D-1 Convertible Preferred Stock (the "*Series D-1 Preferred Stock*"), pursuant to the Articles; and

WHEREAS, the Board has determined that it is desirable and in the best interests of the Corporation to designate One Million One Hundred Eighty Two Thousand (1,182,000) shares of

the Corporation's authorized but unissued preferred stock as 5% Series D-2 Convertible Preferred Stock, such series to have the rights, preferences and privileges as set forth herein.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby designates, fixes number of shares constituting, and determines the rights, preferences, privileges and restrictions relating to a series of the Corporation's preferred stock as follows:

1. Designation. The fifth series of the Corporation's preferred stock shall be designated 5% Series D-2 Convertible Preferred Stock (the "***Series D-2 Preferred Stock***"). The number of shares constituting the Series D-2 Preferred Stock shall be 1,182,000. The "***Series D-2 Sales Price***" of the Series D-2 Preferred Stock is \$1.693345 per share (as adjusted for any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Series D-2 Preferred Stock), reorganization, recapitalization, reclassification, exchange or other like change with respect to the Series D-2 Preferred Stock occurring on or after the date the shares of Series D-2 Preferred Stock are originally issued). The relative rights, preferences, privileges and restrictions granted to or imposed upon the Series D-2 Preferred Stock or the holders thereof are specified below.

2. Ranking. The Series D-2 Preferred Stock shall, with respect to dividends and distributions upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation, rank (i) junior to the Series C Preferred Stock and any other series of capital stock designated by the Board as ranking senior to the Series D-2 Preferred Stock and the Series D Parity Stock (as defined below) with respect to dividends and distributions upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the rights, preferences, privileges, restrictions, number and designation of which are fixed in a resolution adopted by the Board as set forth in one or more certificates of determination, if so stated in such resolution, or in any amendments to, or amendments and restatements of, the Corporation's Articles (collectively, the "***Series D Senior Stock***"), (ii) equal to and in parity with the Series A Preferred Stock, the Series B Preferred Stock, the Series D-1 Preferred Stock and any other series of capital stock designated by the Board as ranking equal to and in parity with the Series D-2 Preferred Stock with respect to dividends and distributions upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the rights, preferences, privileges, restrictions, number and designation of which are fixed in a resolution adopted by the Board as set forth in one or more certificates of determination, if so stated in such resolution, or in any amendments to, or amendments and restatements of, the Corporation's Articles (collectively, the "***Series D Parity Stock***"), and (iii) senior to the Corporation's Common Stock and any other series of the Corporation's capital stock designated by the Board as ranking junior to the Series D-2 Preferred Stock and Series D Parity Stock with respect to dividends and distributions upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the rights, preferences, privileges, restrictions, number and designation of which are fixed in a resolution adopted by the Board as set forth in one or more certificates of determination, if so stated in such resolution, or in any amendments to, or amendments and restatements of, the Corporation's Articles (collectively, the "***Series D Junior Stock***").

3. Dividend Rights. No dividend may be paid on or declared or set apart for any shares of Series D-2 Preferred Stock or Series D Parity Stock until the prior payment in full of all accrued and unpaid dividends on any shares of Series D Senior Stock, and no dividend may

be paid on or declared or set apart for any shares of Series D Junior Stock in any one fiscal year unless a dividend at the rate of five percent (5.0%) per annum of the Series D-2 Sales Price is paid on, or declared and set apart for, each share of Series D-2 Preferred Stock and a dividend is paid on, or declared and set apart for, each share of Series D Parity Stock, if any, at the annual dividend rate applicable to such Series D Parity Stock. The amount of dividend shall be prorated for shares of Series D-2 Preferred Stock and Series D Parity Stock, if any, that are not issued and outstanding for an entire fiscal year. The dividends on the Series D-2 Preferred Stock and Series D Parity Stock, if any, shall be paid out of any assets legally available therefor, when, as, and if declared by the Board. Dividends on the Series D-2 Preferred Stock and Series D Parity Stock shall not be cumulative and no rights shall accrue to the holders of the Series D-2 Preferred Stock or Series D Parity Stock in the event that the Corporation fails to declare or pay dividends on the Series D-2 Preferred Stock at the rate of five percent (5.0%) per annum of the Series D-2 Sales Price or, in the case of Series D Parity Stock, the annual dividend rate per share applicable to such shares of Series D Parity Stock, as the case may be, or in any amount in any prior year of the Corporation, whether or not the earnings of the Corporation in that previous fiscal year were sufficient to pay such dividends in whole or in part. In the event that the Board declares dividends in a fiscal year in an amount less than the aggregate of all the dividend preferences of the Series D-2 Preferred Stock and Series D Parity Stock, if any, then the entire amount of dividends declared by the Board shall be distributed ratably among the holders of the Series D-2 Preferred Stock and Series D Parity Stock such that the same percentage of the annual dividend to which each series of Preferred Stock is entitled is paid on each share of Series D-2 Preferred Stock and Series D Parity Stock.

4. Liquidation Preference.

a. Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made on the shares of Series D-2 Preferred Stock and Series D Parity Stock without first making distributions in respect of liquidation in full on the shares of Series D Senior Stock, if any, and no distribution shall be made on the share of Series D Junior Stock without first making distributions on the shares of Series D-2 Preferred Stock and Series D Parity Stock, if any, equal to the amount of the Series D-2 Sales Price per share for each share of Series D-2 Preferred Stock plus declared but unpaid dividends and the applicable liquidation preference for each share of Series D Parity Stock, in each case as adjusted for any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Series D-2 Preferred Stock or Series D Parity Stock, as the case may be), reorganization, recapitalization, reclassification, exchange or other like change with respect to the Series D-2 Preferred Stock or Series D Parity Stock, as the case may be, occurring on or after the date the shares of Series D-2 Preferred Stock or Series D Parity Stock, as applicable, are originally issued. After such payment to the holders of the Series D-2 Preferred Stock and Series D Parity Stock, if any, the remaining proceeds, if any, shall be distributed to holders of Series D Junior Stock, if any, other than Common Stock, and then allocated among the holders of the Common Stock in proportion to the numbers of shares held by such holders. Notwithstanding the foregoing, if any holder of a future class or series of the Corporation's capital stock is permitted to participate with Series D Junior Stock in the distribution of any assets remaining after the holders of such class or series of capital stock (of each series then outstanding) have been paid their liquidation preference, if any, then the holders of the Series D-2 Preferred Stock shall also be permitted to participate in such distribution in

proportion to the number of shares of Common Stock, determined on an as-converted basis, held by such holders. If upon occurrence of such event the assets and property thus distributed among the holders of the Series D-2 Preferred Stock and the Series D Parity Stock, if any, is insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and property of the Corporation legally available for distribution shall, subject to the prior payment in full of distributions in respect of liquidation on shares of Series D Senior Stock, be distributed ratably among the holders of the Series D-2 Preferred Stock and the Series D Parity Stock, such that the same percentage of the following amounts is paid on each share of Series D-2 Preferred Stock and Series D Parity Stock: the sum of the Series D-2 Sales Price and declared but unpaid dividends on Series D-2 Preferred Stock and the applicable liquidation preference of and declared and unpaid dividends on the Series D Parity Stock. A Merger or Asset Sale (each as defined herein) shall be deemed to be a liquidation, dissolution or winding up within the meaning of this Certificate.

b. Consent to Certain Distributions. Each holder of an outstanding share of Series D-2 Preferred Stock shall be deemed to have consented, for purposes of Sections 502 and 503 of the California Corporations Code, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, independent contractors, vendors, strategic partners or customers upon termination of their services or failure to fulfill certain conditions pursuant to agreements providing for the right of said repurchase between the Corporation and such persons at the same price per share such persons paid therefor.

5. Conversion Privilege.

a. Right to Convert.

(i) Conversion Right. Any holder of Series D-2 Preferred Stock may at the option of such holder convert, at any time and from time to time, at the Corporation's executive offices, all or any part of such holder's shares of Series D-2 Preferred Stock into that number of fully-paid and non-assessable shares of Common Stock that is equal to the Series D-2 Sales Price divided by the Series D-2 Conversion Price multiplied by the number of shares of Series D-2 Preferred Stock to be converted. The "**Series D-2 Conversion Price**" for the Series D-2 Preferred Stock shall initially be the Series D-2 Sales Price, and shall be subject to adjustment as provided herein. The number of shares of Common Stock into which each share of Series D-2 Preferred Stock may be converted is hereinafter referred to as the "**Series D-2 Conversion Rate**."

(ii) Mechanics of Conversion. Each holder of Series D-2 Preferred Stock that desires to convert such shares into shares of Common Stock pursuant to this paragraph 5(a) shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series D-2 Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series D-2 Preferred Stock being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. Such conversion shall be deemed to have been made at the close of business on the date of such

surrender of the certificates representing the shares of Series D-2 Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(iii) Status of Converted Shares. Shares of Series D-2 Preferred Stock converted as herein provided may not be reissued. 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 conversion of its shares of Series D-2 Preferred Stock, such number of shares of Common Stock as shall be sufficient to effect the conversion of all shares of Series D-2 Preferred Stock from time to time outstanding, and the Corporation shall obtain and keep in force such permits as may be required in order to enable the Corporation lawfully to issue and deliver such number of shares of Common Stock. On conversion, no fractional shares of Common Stock shall be issued, but in lieu thereof the Corporation shall pay therefor in cash the amount equal to such fraction multiplied by the fair market value of a share of Common Stock as determined by the Board in good faith.

b. Automatic Conversion.

(i) Public Offering. Upon the consummation of an underwritten public offering of Common Stock of the Corporation pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, in which (A) the per share price is at least equal to: (1) if the Fifth Milestone Closing Date (as defined in Series D Preferred Stock Shareholders Agreement, dated as of September 30, 2004, by and among the Corporation, Dr. Peter Lu, and the other parties named therein (the "*Shareholders Agreement*")) has occurred in accordance with the terms of the Series D Preferred Stock Purchase Agreement, the Milestone Share Price (as defined in the Series D Preferred Stock Purchase Agreement, dated as of September 24, 2004, by and between the Corporation and the other parties named therein (the "*Stock Purchase Agreement*")) applicable to the Milestone Investment related to the Fifth Milestone Closing Date (each as defined in the Stock Purchase Agreement), or (2) in the event that the Fifth Milestone Closing Date has not occurred, the lesser of (x) \$5.00 and (y) the product of (a) the Milestone Share Price applicable to the last Milestone Investment made as of the date of such determination and (b) 1.5, in each case as adjusted subsequent to the date on which the shares of Series D-2 Preferred Stock are originally issued (the "*Series D-2 Original Issue Date*") for any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Common Stock), reorganization, recapitalization, reclassification, exchange or other like change with respect to the Common Stock occurring on or after the Series D-2 Original Issue Date (the "*Qualified Share Price*"); and (B) the Corporation receives therefrom in excess of Ten Million Dollars (\$10,000,000), after deducting underwriting discounts and commissions and expenses of the offering payable by the Corporation (a "*Qualified Public Offering*"), all outstanding shares of Series D-2 Preferred Stock shall be deemed automatically converted into fully paid and non-assessable shares of Common Stock at the then effective Series D-2 Conversion Rate.

(ii) Asset Sale or Merger. All outstanding shares of Series D-2 Preferred Stock shall also be deemed automatically converted into fully paid and non-assessable

shares of Common Stock at the then effective Series D-2 Conversion Rate upon the consummation of a sale of substantially all of the assets of the Corporation (an "***Asset Sale***") or a merger (other than any merger effected exclusively for the purpose of changing the domicile of the Corporation) involving the Corporation and/or one or more of its subsidiaries in which shareholders of the Corporation immediately prior to the merger do not own a majority of the voting securities of the Corporation, if the Corporation survives, or the surviving entity, if the Corporation does not survive, immediately following the merger (a "***Merger***") if (1) in the case of an Asset Sale, the value of the equity, cash and/or property of the acquiring corporation distributable to the holder of each share of Series D-2 Preferred Stock from the proceeds of such asset sale is at least equal to the Qualified Share Price or, (2) in the case of a Merger, the value of the equity, cash and/or property of the surviving entity to be received by the holder of each share of Series D-2 Preferred Stock is at least equal to the Qualified Share Price. For purposes of this paragraph, the value of equity shall be determined in good faith by the Board whose determination shall be binding and conclusive.

(iii) Conversion of a Majority of Series D Preferred Shares. At such time as more than 50% of the aggregate number of shares of Series D-2 Preferred Stock issued have been converted into Common Stock, all outstanding shares of Series D-2 Preferred Stock shall also be deemed automatically converted into fully paid and non-assessable shares of Common Stock at the then effective Series D-2 Conversion Rate.

c. Adjustments to Series D-2 Conversion Price Upon Issuance of Additional Shares of Common.

(i) Special Definition. For purposes of this paragraph 5(c), "***Additional Shares of Common***" shall mean all shares of Common Stock issued (or, pursuant to paragraph 5(c)(iii), deemed to be issued) by the Corporation on or after the Series D-2 Original Issue Date, other than:

(1) shares of Common Stock issued upon conversion of shares of Series D-2 Preferred Stock or Series D Parity Stock;

(2) up to 213,400 shares of Common Stock issued or deemed issued in connection with a merger (other than a Merger) involving the Corporation or the purchase of assets or equity by the Corporation in a business in a transaction approved by the Board (in each case as adjusted for any stock split, reverse stock split, stock dividend, reorganization, recapitalization, reclassification, exchange or other like change with respect to the Common Stock);

(3) that number of shares of or options to purchase Common Stock equal to the Annual Incentive Stock Awards Limit (as defined in the Shareholders Agreement) issued or issuable to the Corporation's employees, officers, directors, consultants or independent contractors;

(4) up to 213,400 shares of or options to purchase Common Stock issued or issuable to persons or entities, including without limitation vendors and customers, with whom the Corporation enters into a strategic corporate partner relationship, in

all cases as may be determined by the Board from time to time (in each case as adjusted for any stock split, reverse stock split, stock dividend, reorganization, recapitalization, reclassification, exchange or other like change with respect to the Common Stock);

(5) shares of Common Stock issued or deemed issued to banks or financial institutions providing a working capital credit line or to equipment lessors, as may be determined by the Board from time to time;

(6) shares of Common Stock issued or issuable as a dividend or distribution on preferred stock or pursuant to any event for which adjustment is made pursuant to paragraph 5(c)(vi), (vii) or (viii) hereof; or

(7) by way of a dividend or other distribution on securities referred to in clauses (1) through (6) above and this clause (7);

*provided, however*, that following the first to occur of the events listed in clauses (i) and (ii) of Section 6.1 of the Shareholders Agreement, then (x) in lieu of clause (2) above, Additional Shares of Common shall not include any shares of Common Stock issued or deemed issued in connection with a merger (other than a Merger) involving the Corporation or the purchase of assets or equity by the Corporation in a business in a transaction approved by the Board; and (y) in lieu of clause (4) above, Additional Shares of Common shall include shares of or options to purchase Common Stock issued or issuable to persons or entities, including without limitation vendors and customers, with whom the Corporation enters into a strategic corporate partner relationship, in all cases as may be determined by the Board from time to time; and *provided further*, that following the first to occur of any such events listed in the immediately foregoing proviso and the Fifth Milestone Closing Date, then in lieu of clause (3) above, Additional Shares of Common shall also not include any shares of or options to purchase Common Stock issued or issuable to the Corporation's employees, officers, directors, consultants, or independent contractors.

(ii) No Adjustment of Series D-2 Conversion Price. No adjustment in the Series D-2 Conversion Price shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for Additional Shares of Common issued or deemed to be issued by the Corporation is less than the Series D-2 Conversion Price in effect on the date of, and immediately prior to such issue.

(iii) Deemed Issuance of Additional Shares of Common.

(1) Options and Convertible Securities. Except as otherwise provided in paragraphs 5(c)(i) and 5(c)(ii), in the event the Corporation at any time or from time to time after the Series D-2 Original Issue Date shall issue any options or convertible securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such options or convertible securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such options or, in the case of convertible securities and options therefor, the conversion or exchange of such convertible securities or exercise of such options, shall be deemed to be Additional Shares of Common issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, *provided* that in any such case in which Additional Shares of Common are deemed to be issued:

(a) no further adjustment in the Series D-2 Conversion Price shall be made upon the subsequent issue of convertible securities or shares of Common Stock upon the exercise of such options or conversion or exchange of such convertible securities;

(b) if such options or convertible securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series D-2 Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such options or the rights of conversion or exchange under such convertible securities;

(c) no readjustment pursuant to clause (b) above or clause (d) below shall have the effect of increasing the Series D-2 Conversion Price to an amount which exceeds the lower of (i) the Series D-2 Conversion Price on the original adjustment date, or (ii) the Series D-2 Conversion Price that would have resulted from any issuance of Additional Shares of Common between the original adjustment date and such readjustment date;

(d) upon the expiration of any such options or any rights of conversion or exchange under such convertible securities which shall not have been exercised, the Series D-2 Conversion Price, computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

i) in the case of convertible securities or options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such options or the conversion or exchange of such convertible securities and the



consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such convertible securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

ii) in the case of options for convertible securities, only the convertible securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised options, plus the consideration deemed to have been received by the Corporation (determined pursuant to paragraph 5(c)(vii)) upon the issue of the convertible securities with respect to which such options were actually exercised; and

(e) if such record date shall have been fixed and such options or convertible securities are not issued on the date fixed therefor, the adjustment previously made in the Series D-2 Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Series D-2 Conversion Price shall be adjusted pursuant to this paragraph 5(c)(iii) as of the actual date of their issuance.

(iv) Adjustment of Series D-2 Conversion Price Upon Issuance of Additional Shares of Common. In the event the Corporation issues or is deemed to issue Additional Shares of Common without consideration or for consideration per share less than the applicable Series D-2 Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the Series D-2 Conversion Price shall be reduced, concurrently with such issue (the "*Series D-2 Weighted Average Antidilution*"), to a price (calculated to the nearest cent) determined by multiplying the Series D-2 Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Series D-2 Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued; and *provided further*, that for the purposes of this paragraph 5(c)(iv), all shares of Common Stock issuable upon exercise, conversion or exchange of outstanding options, preferred stock (including without limitation Series D-2 Preferred Stock and Series D Parity Stock) and other convertible securities, as the case may be, shall be deemed to be outstanding, and immediately after any Additional Shares of Common are deemed issued, such Additional Shares of Common shall be deemed to be outstanding. Notwithstanding the foregoing, if the holders of shares in a future class or series of the Corporation's capital stock have a conversion price adjustment upon the issuance of Additional Shares of Common such that the conversion price applicable to such shares of capital stock is equal to the quotient of the aggregate consideration received for the Additional Shares of Common divided by the number of Additional Shares of Common ("*Ratchet Antidilution*"),

then the holders of Series D-2 Preferred Stock shall have the Series D-2 Conversion Price adjusted for such Ratchet Antidilution rights as to any Additional Shares of Common rather than the Series D-2 Weighted Average Antidilution rights described above.

(v) Adjustments for Subdivisions, Splits, Combinations, Consolidations, Reorganizations or Reclassifications of Common Stock. In the event that after the date the Series D-2 Preferred Stock is originally issued the outstanding shares of Common Stock shall be (a) subdivided or split into a greater number of shares of Common Stock, (b) combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock or (c) changed into a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise, the holders of the shares of Series D-2 Preferred Stock shall receive upon conversion, the stock and/or securities to which the holder would have been entitled had the holder held, at the time of said split, subdivision, combination, consolidation, reorganization or reclassification, the number of shares of Common Stock into which Series D-2 Preferred Stock could have converted immediately prior to such event.

(vi) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time after the date of the first issuance of the Series D-2 Preferred Stock makes, or fixes a record date for, the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in the securities of the Corporation, then the holders of the shares of Series D-2 Preferred Stock shall receive upon conversion, in addition to the number of shares of Common Stock receivable thereupon, the stock or securities to which the holder would have been entitled had the holder held, at the time of said dividend or other distribution, the number of shares of Common Stock into which the Series D-2 Preferred Stock could have converted immediately prior to such event, and had such holders thereafter during the period from the date of such event to and including the date of conversion, retained such stock or securities receivable by such holders as aforesaid during such period, subject to all other adjustments called for during such period under this paragraph 5 with respect to the rights of the holders of the Series D-2 Preferred Stock.

(vii) Determination of Consideration. For purposes of this paragraph 5(c), the consideration received by the Corporation for the issue of any Additional Shares of Common shall be as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends and prior to any commissions or expenses paid by the Corporation;

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

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

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 5(c)(iii)(1), relating to options and convertible securities, shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such options or convertible securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such options or the conversion or exchange of such convertible securities, or in the case of options for convertible securities, the exercise of such options for convertible securities and the conversion or exchange of such convertible securities by

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

(viii) Adjustments to the Series D-2 Conversion Price for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, Common Stock dividend or otherwise), into a greater number of shares of Common Stock, the Series D-2 Conversion Price in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Series D-2 Conversion Price in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(ix) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes or fixes a record date for the determination of holders of Common Stock entitled to receive any distribution (excluding any repurchases of securities by the Corporation not made on a *pro rata* basis from all holders of any class of the Corporation's securities) payable in property or in securities of the Corporation other than shares of Common Stock and other than as otherwise adjusted in this paragraph 5, then and in each such event provision shall be made so that the holders of Series D-2 Preferred Stock shall receive upon such distribution the amount of securities of the Corporation which they would have received had their shares of Series D-2 Preferred Stock then been converted into Common Stock

on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by such holders as aforesaid during such period, subject to all other adjustments called for during such period under this paragraph 5 with respect to the rights of the holders of the Series D-2 Preferred Stock.

(x) Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Series D-2 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 above), the Series D-2 Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series D-2 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 Series D-2 Preferred Stock immediately before that exchange.

d. No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this paragraph 5 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 D-2 Preferred Stock against impairment.

e. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series D-2 Conversion Price pursuant to this paragraph 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series D-2 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 D-2 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series D-2 Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Series D-2 Preferred Stock.

f. Notices of Record Date. In the event that the Corporation shall propose at any time 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 any other securities or property, or to receive any other rights, or take any action of the type described in Section 5(c)(v), (vi), (viii), (ix) or (x), then, in connection with each such event, the Corporation shall send to the holders of the Series D-2 Preferred Stock at least 20 days' prior written notice of the date on which a record shall be taken for such action and, as applicable, specifying the date on which the holders of the Common Stock shall be entitled thereto (or, if such action does not require the fixing of a record date, 30 days prior to the taking of such proposed action). Such notice shall set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the

extent such action may be known at the date of such notice) on the Conversion Price, the number, kind or class of other securities which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of the Series D-2 Preferred Stock. Each such written notice shall be given by certified first class mail, postage prepaid, addressed to the holders of Series D-2 Preferred Stock at the address for each such holder as shown on the books of the Corporation. Such notice shall be effective two business days after the date on which it is mailed.

g. 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 Series D-2 Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all the then outstanding shares of Series D-2 Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series D-2 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.

6. Voting Rights. Except as provided herein or as otherwise required by law, the holders of Series D-2 Preferred Stock shall be entitled to notice of any shareholders meeting in accordance with the bylaws of the Corporation (the "**Bylaws**") and to vote, together as a single class with the holders of Common Stock and the holders of any other class or series of the Corporation's capital stock designated by the Board as voting equally with shares of Common Stock, including, without limitation, the Series A Preferred Stock and Series B Preferred Stock (except with respect to those matters required by law to be submitted to a separate class or series vote) for the election of directors and for any other matter submitted to shareholders for a vote, on the following basis:

a. Common Stock Vote. Each share of Common Stock issued and outstanding shall have one vote.

b. Preferred Stock Vote. Each share of Series D-2 Preferred Stock issued and outstanding shall have the number of votes equal to the number of shares of Common Stock into which each is convertible, as adjusted from time to time under paragraph 5 hereof. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Series D-2 Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

c. Cumulative Voting. Notwithstanding the above, for the election of directors each holder of Common Stock and Series D-2 Preferred Stock shall, after giving the notice required by Section 708 of the California Corporations Code, as amended from time to time, be entitled to the number of votes as determined pursuant to paragraphs (a) and (b) above multiplied by the number of directors to be elected with each shareholder being entitled to cumulate such votes for one candidate or to distribute such votes among the candidates as the shareholder sees fit.

7. Covenants. In addition to any other rights provided by law, so long as any shares of Series D-2 Preferred Stock shall be outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of the outstanding shares of Series D-2 Preferred Stock:

a. amend or repeal any provision of, or add any provision to, the Articles or Bylaws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series D-2 Preferred Stock authorized hereby (whether by merger or otherwise);

b. reclassify any shares of Series D Junior Stock into shares of capital stock having any rights, preferences or privileges of priority with respect to dividends and distributions upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation senior to such rights, preferences or privileges of the Series D-2 Preferred Stock (whether by merger or otherwise);

c. create or issue any security which has rights, preferences or privileges with respect to dividends and distributions upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation senior to such rights, preferences and privileges of the Series D-2 Preferred Stock;

d. until the first to occur of (i) the date on which the Shareholders Agreement is terminated pursuant to clause (i), (ii) or (iii) of Section 6.1 thereof and (ii) the Fifth Milestone Closing Date, create or issue any security which has rights, preferences or privileges with respect to dividends and distributions upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation on parity with such rights, preferences and privileges of the Series D-2 Preferred Stock or increase the designated amount of Series D-2 Preferred Stock;

e. effect a Merger or Asset Sale pursuant to paragraph 5(b)(ii) in which the Series D-2 Preferred Stock is not automatically converted into Common Stock; or

f. without limiting any of the foregoing, create a series of Series D Parity Stock having a liquidation preference per share less than the Series D-2 Sales Price, a dividend rate greater than five percent (5.0%) per annum of the liquidation preference of such Series D Parity Stock, or a liquidation preference greater than the initial sales price of such Series D Parity Stock (as adjusted for any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Series D-2 Preferred Stock), reorganization, recapitalization, reclassification, exchange or other like change with respect to the Series D-2 Preferred Stock occurring on or after the date the shares of Series D-2 Preferred Stock are originally issued) plus declared but unpaid dividends.


RESOLVED FURTHER, that the President and Secretary of this Corporation are each authorized to execute, verify, and file this Certificate of Determination in accordance with California law.

C. Effective upon the filing of this document, the authorized number of shares of the Corporation's Series D-2 Preferred Stock is 1,182,000, none of which have been issued.

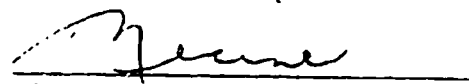
*(Signature Page Follows)*

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.

Executed in Sunnyvale, CA  
on March 28, 2005

  
Peter S. Lu  
President

Executed in Sunnyvale, CA  
on March 28, 2005

  
Thomas D. Recine  
Secretary