

NOT

A0627608

2652490

FILED
Office of the Secretary of State
of the State of California

APR 12 2005

SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
AVANTIS MEDICAL SYSTEM, INC.

The undersigned, Fred R. Seddiqui and Arman Pahlavan, hereby certify that:

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

ARTICLE I

The name of the corporation is Avantis Medical Systems, Inc. (the "Corporation").

ARTICLE II

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

ARTICLE III

(A) Classes of Stock The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is twenty-four million one hundred fifty thousand (24,150,000) shares. Twenty million (20,000,000) shares shall be designated Common Stock, with par value of \$0.001 per share, and four million one hundred fifty thousand (4,150,000) shares shall be designated Preferred Stock, with par value of \$0.001 per share.

(B) Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by these Articles of Incorporation may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of one million one hundred fifty thousand (1,150,000) shares. The second series of Preferred Stock shall be designated "Series A-1 Preferred Stock" and shall consist of three million (3,000,000) shares. The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock and Series A-1 Preferred Stock are set forth below in this Article III(B).

1. Dividend Provisions. The holders of shares of Series A Preferred Stock and Series A-1 Preferred Stock shall be entitled to receive cash dividends at the rate of \$0.03 per share and \$0.06 per share, respectively, per year (as adjusted for stock splits, stock dividends or distributions, recapitalizations and similar events) out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in

Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock for the Corporation) on the Common Stock of the Corporation, at the same rate as any dividend shall be from time to time declared by the Board of Directors on the outstanding Common Stock. The dividends shall be payable quarterly, and shall be paid when, as and if declared by the Board of Directors. Such dividends shall not be cumulative. Subject to the provisions of this Section (1), no dividends shall be paid or declared on the Common Stock during any fiscal year unless a similar dividend is paid or declared on the Series A Preferred Stock and Series A-1 Preferred Stock.

2. Liquidation.

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred Stock and Series A-1 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount equal to \$0.50 and \$1.00, respectively, for each share of Series A Preferred Stock and Series A-1 Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock and Series A-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series A-1 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** If, upon the occurrence of a liquidation, dissolution or winding up, assets or surplus funds remain in the Corporation after the distribution of amounts specified in Section 2(a), the holders of Series A Preferred Stock and Series A-1 Preferred Stock and the holders of Common Stock shall be entitled to share in all such remaining assets and surplus funds in the same manner as if all shares of Series A Preferred Stock and Series A-1 Preferred Stock had been converted into Common Stock.

(c) Certain Acquisitions.

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (A) the acquisition of the Corporation by another person or entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, but excluding any merger effected exclusively for purposes of changing the domicile of the Corporation); or (B) a sale of all or substantially all of the assets of the Corporation, unless in the case of either (A) or (B) the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity in approximately the same relative percentages after such acquisition or sale as before such acquisition or sale.

(ii) Valuation of Consideration. In the event of a deemed liquidation as described in Section 2(c)(i) above, 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:

(A) Securities not subject to investment letter or other restrictions on free marketability, including without limitation Rule 145 restrictions:

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

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

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

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in Section 2(c)(ii)(A) to reflect the approximate fair market value thereof; as determined in good faith by the Board of Directors. The fair market value of any property other than cash or securities shall be the fair market value determined by the Board of Directors.

The fair market value of any property other than cash or securities shall be the fair market value determined by the Board of Directors.

(iii) Notice of Transaction. 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 transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. 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 Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock; and provided further that the Corporation promptly (but in no event less than two (2) business days prior to the closing of the transaction) gives written notice to all holders of Preferred Stock that did not consent to the shortening of such periods.

(iv) Effect of Noncompliance. In the event the requirements of this Section 2(c)(i.i) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

3. Redemption. The Preferred Stock is not redeemable.

4. Conversion. The holders of the Series A Preferred Stock and Series A-1 Preferred Stock shall have conversion rights as follows (the "Conversion Rights").

(a) Right to Convert. Subject to Section 4(c), each share of Series A Preferred Stock and Series A-1 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 \$0.50 and \$1.00, respectively, by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series A Preferred Stock shall be \$0.50 per share. The initial Conversion Price per share of Series A-1 Preferred Stock shall be \$1.00 per share. Such initial Conversion Prices shall be subject to adjustment as set forth in Section 4(d).

(b) Automatic Conversion. Each share of Series A Preferred Stock and Series A-1 Preferred Stock shall automatically be converted into shares of Common Stock at their respective Conversion Price at the time in effect for such share immediately upon the earlier of (i) the Corporation's sale of its Common Stock in an underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, at a public offering price (prior to underwriters' discounts and expenses) with the aggregate gross cash proceeds to the Corporation and/or any selling stockholders (after deduction for underwriters' discounts and expenses relating to the issuance, including without limitation fees to the Corporation's counsel) which exceed \$15,000,000 or (ii) the date specified by written consent of the holders of a majority of the voting power of all then outstanding shares of Series A Preferred Stock and Series A-1 Preferred Stock voting as a single class.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a 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 holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be

deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. Upon receipt of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of a certificate of shares of Preferred Stock and (in case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Corporation, or (in the case of mutilation) upon surrender and cancellation of such certificate, the Corporation will issue, in lieu thereof, a new certificate to the holder.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Prices of the Series A Preferred Stock and Series A-1 Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, after the date upon which any shares of Series A Preferred Stock and Series A-1 Preferred Stock were first issued (the "Purchase Date") any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price of the Series A Preferred Stock or Series A-1 Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the such Conversion Price of the Series A Preferred Stock and Series A-1 Preferred Stock in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this clause (i)) be reduced, concurrently with such issue to a price determined by multiplying the Conversion Price of the Series A Preferred Stock and Series A-1 Preferred Stock, as applicable, in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price for the Series A Preferred Stock or Series A-1 Preferred Stock, as applicable; 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 Stock so issued; provided, however, that for the purposes of Section 4(d)(i)(A), all shares of Common Stock issued or issuable upon conversion of the then outstanding Preferred Stock or other Convertible Securities (hereinafter defined) or upon exercise of the then outstanding Options (hereinafter defined) shall be deemed outstanding.

For the purposes of this Section 4(d)(i)(A), the following terms shall have the following meanings:

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

"Convertible Securities" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(B) No adjustment to the Conversion Price of either the Series A Preferred Stock or Series A-1 Preferred Stock shall be made in an amount less than one one-hundredth of one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of such Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

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

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

(E) In the case of issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i) and Section 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 4(d)(i)(C) and 4(d)(i)(D), if any, received by the Corporation upon the issuance of such options or rights plus minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights

were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights the consideration in each case to be determined in the manner provided in Section 4(d)(i)(C) and 4(d)(i)

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Prices of the Series A Preferred Stock and Series A-1 Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed pursuant to Section 4(d)(i)(A) to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Prices of the Series A Preferred Stock and Series A-1 Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date other than:

(A) Shares of Common Stock issued or deemed to have been issued pursuant to a transaction described in Section 4(d)(iii) hereof;

(B) Shares of Common Stock issued or deemed to have been issued to employees, consultants, directors or vendors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation, at any time when the total number of shares of Common Stock so issuable or issued (and not repurchased at cost by the Corporation or otherwise terminated in connection with the termination of any such person's relations with the Company) does not exceed 2,500,000 shares

(or such higher amount approved by the Board of Directors) (adjusted to reflect stock dividends, stock splits or recapitalization);

(C) Shares of Common Stock issued or deemed to have been issued to Financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors; and

(D) Shares of Common Stock issued or deemed to have been issued upon conversion of Series A Preferred Stock or Series A-1 Preferred Stock.

(iii) In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Prices of the Series A Preferred Stock and Series A-1 Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred Stock and Series A-1 Preferred Stock shall be increased in proportion to such increase the aggregate of shares of Common Stock outstanding and those issuable-with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuance's in Section 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Prices of the Series A Preferred Stock and Series A-1 Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(iii), then, in each such case for the purpose of this Section 4(e), the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale

of assets transactions provided for elsewhere in this Section 4 or Section 2) provisions shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Preferred Stock after the recapitalization to the end that the provisions of this Section 4 including adjustment of the Conversion Prices then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(h) No Fractional Share and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock and Series A-1 Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with one half being rounded upward). In lieu of any fractional shares which would otherwise be issuable, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of Common Stock on the date of conversion, as determined in accordance with Section 2(c)(ii). Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of a Conversion Price of the Series A Preferred Stock and Series A-1 Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof, and prepare and furnish to each holder of Series A Preferred Stock and Series A-1 Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock or Series A-1 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Prices of the Series A Preferred Stock and Series A-1 Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of the Series A Preferred Stock and Series A-1 Preferred Stock.

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

(j) 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, in addition to such other remedies as shall be available to the holder of such 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 purposes, including without limitation, engaging its best efforts to obtain the requisite shareholder approval of any necessary amendment to these articles.

5. Voting Rights; Directors.

Except as otherwise expressly provided herein or by law, the holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and 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, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

6. Protective Provisions.

(a) So long as more than 1,000,000 shares of Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least majority of the then outstanding shares of Preferred Stock, voting as a separate class:

(i) sell, convey, or otherwise dispose of or encumber all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation), effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the

Corporation is disposed of or effect any other transaction constituting a liquidation dissolution or winding up of the Corporation within the meaning of Section 2(c), provided that this Section 6(a)(i) shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Corporation;

(ii) amend or waive any provision of these Articles of Incorporation or amend the bylaws of the Corporation in a manner adverse to the holders of Preferred Stock; or

(iii) authorize or issue, or obligate itself to issue, any, other equity security, including any other security convertible into or exercisable for any equity security having any right, preference or privilege over, or being on a parity with, such series; or

(iv) alter or change the rights, preferences, privileges or restrictions of the shares of such series so as to affect adversely the shares of such series; or

(v) increase the total number of authorized shares of such series.

7. Status of Converted Stock. In the event of any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. The Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

8. Repurchase of Shares. In connection with repurchases at cost by the Corporation of its Common Stock pursuant to its agreements with employees or former employees, Section 502 and 503 of the California General Corporation Law shall not apply in whole or in part with respect to such repurchases.

9. Notice. Any notice required by the provisions of this Article III(B) to be given to the holders of shares Preferred Stock shall be deemed given three (3) days after deposit in the U.S. mail, postage prepaid, or immediately upon transmission of a facsimile (with confirmation received), in each case addressed to each holder of record at his address or facsimile number appearing on the books of the Corporation.

(C) Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Right. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) of this Article III.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by the law.

ARTICLE IV

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

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

3 The foregoing amendment has been approved by the Board of Directors of this Corporation.

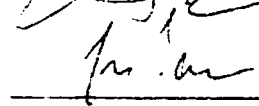
4 The foregoing amendment was approved by the holders of the requisite number of shares of this Corporation in accordance with Sections 902 and 903 of the California General Corporation Law. The total number of outstanding shares entitled to vote with respect to the foregoing amendment was 4,500,000 shares of Common Stock and 1,150,000 shares of Series A Preferred Stock. The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required. The percentage vote required was a majority of the Common Stock voting as a single class, a majority of the outstanding shares of Series A Preferred Stock voting as a single class and the majority of the outstanding shares of Common Stock and Series A Preferred Stock voting together as a single class.

The undersigned certify 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 knowledge.

Executed at Palo Alto, California, on April 12, 2005.



Fred R. Seddiqui, President



Arman Pahlavan, Secretary