

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

**MAR 16 2005**

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
ALLPOSTERS.COM, INC.**

The undersigned, Michael Heinstein and Chris Burns certify that:

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

**I.**

The name of this corporation is Allposters.com, Inc. (the "Corporation" or the "Company").

**II.**

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

**III.**

A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 142,500,000 shares, 110,000,000 shares of which shall be Common Stock (the "Common Stock"), and 32,500,000 shares of which shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock shall have a par value of \$0.001 per share, and the Common Stock shall have a par value of \$0.001 per share.

C. The undesignated Preferred Stock may be issued from time to time in one or more series.

D. 16,000,000 of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Preferred").

E. 16,500,000 of the authorized shares of Preferred Stock are hereby designated "Series A-1 Preferred Stock" (the "Series A-1 Preferred").

F. The rights, preferences, privileges, restrictions and other matters relating to the Series A and Series A-1 Preferred Stock are as follows:

1. DIVIDEND RIGHTS.

(a) Holders of shares of Series A Preferred and Series A-1 Preferred, prior and in preference to the holders of any other capital stock of the Company ("Junior Stock"), shall be entitled to receive, when, as and if declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the Series A Original Issue Price (as defined below) or Series A-1 Original Issue Price (as defined below), as applicable, per annum on each outstanding share of Series A Preferred or Series A-1 Preferred (as appropriately adjusted for Recapitalizations (as defined below)). The Original Issue Price of the Series A Preferred shall be \$1.816 (the "Series A Original Issue Price") and the Original Issue Price of the Series A-1 Preferred shall be \$1.677 (the "Series A-1 Original Issue Price"). The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to such dividends shall accrue to a holder of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any calendar year. The term "Recapitalization" shall mean, with respect to a particular series or class of capital stock of the Corporation, any stock dividends, splits, distributions, subdivisions, combinations, reverse stock splits, reclassifications, recapitalizations and the like with respect to such shares of such series or class of the Corporation's capital stock, in each case, effective after the date hereof.

(b) So long as any shares of Series A Preferred or Series A-1 Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed or otherwise acquired for value by the Company (except for repurchases of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements approved by the Company's Board of Directors under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment or services or through the exercise of any right of first refusal) until all dividends (set forth in Section 1(a) above) on the Series A Preferred or Series A-1 Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of Junior Stock, an additional dividend shall be paid with respect to all outstanding shares of Series A Preferred and Series A-1 Preferred in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Junior Stock. The provisions of this Section 1(b) shall not, however, apply to any repurchase of any outstanding securities of the Company that is approved by the Company's Board of Directors.

2. VOTING RIGHTS.

(a) General Rights. Except as otherwise provided herein or as required by law, the Preferred Stock shall vote together with the Common Stock at any annual or special meeting of the shareholders and not as a separate class, and may act by written consent in

the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Preferred Stock shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Preferred Stock are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Company. Fractional votes shall not, however, be permitted, and any fractional voting rights 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).

(b) **Election of Board of Directors.** The holders of Series A Preferred, voting as a separate series, shall be entitled to elect one member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director. The holders of Series A-1 Preferred, voting as a separate series, shall be entitled to elect one member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director. The holders of Common Stock, voting together as a separate class, shall be entitled to elect two members of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. The holders of Common Stock and Preferred Stock, voting together as if a single class and on an as-if-converted-to-Common-Stock basis, shall be entitled to elect all remaining members of the Board of Directors at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(c) **Removal.** The Board of Directors or any individual director may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote on such removal; *provided, however*, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election in which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

(d) **Protective Provisions.** The Corporation shall not (by amendment, merger, consolidation, reclassification or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least sixty percent (60%) of the then outstanding shares of Preferred Stock, voting together as a single class on the basis of one vote for each share of Preferred Stock, take any action that:

(i) increases or decreases the authorized number of shares of Common Stock or Preferred Stock;

(ii) results in the payment or declaration of any dividend (other than in Common Stock) on any shares of Common Stock or Preferred Stock or the redemption, purchase or other acquisition (or payment into or the setting aside of funds for a sinking fund for such purpose) of any share or shares of Preferred Stock or Common Stock; *provided, however*, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements approved by the Company's Board of Directors under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment or services or through the exercise of any contractual right of first refusal, and *provided further*, that the holders of Preferred Stock expressly waive their rights, if any, as described in California Code Sections 502 and 503 as they relate to repurchases of shares upon termination of employment or service as a consultant or director.

(iii) results in any Acquisition or Asset Transfer (each term as defined in Section 3(b) herein);

(iv) amends any provision of the Company's Amended and Restated Articles of Incorporation or Bylaws;

(v) increases or decreases the authorized size of the Company's Board of Directors; or

(vi) results in any Liquidation Event (as defined below).

In addition, the Corporation shall not (by amendment, merger, consolidation, reclassification or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of a given series of Preferred Stock, voting as a single class on the basis of one vote for each share of such series of Preferred Stock, take any action that:

(i) alters or waives any of the rights, preferences or privileges of such series of Preferred Stock;

(ii) increases or decreases the number of authorized shares of such series of Preferred Stock;

(iii) would result in the issuance of additional shares of such series of Preferred Stock; or

(iv) authorizes, creates or issues, or obligates itself to issue, any other debt or equity security, including any other security convertible into or exercisable for any

equity security, having a preference over, or being on a parity with, said series of Preferred Stock with respect to dividends, redemption, conversion, liquidation or otherwise.

### 3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution or winding up of the Company (a "Liquidation Event"), whether voluntary or involuntary, prior and in preference to any distribution or payment of any of the assets of the Corporation or proceeds of such Liquidation Event (as applicable) to the holders of any Junior Stock by reason of their ownership thereof, the holders of Preferred Stock shall be entitled to be paid out of the assets of the Company an amount per share of Preferred Stock equal to the greater of (i) the proceeds they would have received had their Preferred Stock converted to Common Stock immediately prior to the Liquidation Event or (ii) in the case of Series A Preferred, the Series A Original Issue Price (as appropriately adjusted for Recapitalizations), plus all declared and unpaid dividends on the Series A Preferred, for each share of Series A Preferred held by them, and, in the case of Series A-1 Preferred, the Series A-1 Original Issue Price (as appropriately adjusted for Recapitalizations), plus all declared and unpaid dividends on the Series A-1 Preferred, for each share of Series A-1 Preferred held by them. If, upon any such liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred and Series A-1 Preferred of the liquidation preferences set forth in clause (ii) above, then, subject to the rights of any series of Preferred Stock that may from time to time come into existence, such assets shall be distributed among the holders of Series A Preferred and Series A-1 Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) The following events shall be deemed to be a Liquidation Event under this Section 3:

(i) the closing of any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Company immediately prior to such consolidation, merger or reorganization own less than 50% of the voting power or equity interest in the Company immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to which the Company is a party in which more than 50% of the voting power or equity interest in the Company is transferred, excluding (A) any consolidation or merger effected exclusively to change the domicile of the Company and (B) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof (an "Acquisition"); or

(ii) the closing of a sale, lease or other disposition of all or substantially all of the assets of the Company (an "Asset Transfer").

(iii) In any of such events, if the consideration received by the Corporation or the proceeds to be distributed to holders of shares of the Company's capital stock

(as applicable) is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange or through The Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the 20-trading day period ending three trading days prior to the closing of the Liquidation Event;

(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 20-trading day period ending three trading days prior to the closing of the Liquidation Event; 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 (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 (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board of Directors.

(C) Notwithstanding the foregoing, if the consideration received by the Corporation or the proceeds to be distributed to holders of shares of the Corporation's capital stock is other than cash, and the definitive merger agreement, asset purchase agreement or other definitive transaction document entered into with respect to such Liquidation Event specifies an alternative method of determining the value of such consideration or proceeds, then, for the purpose of this Section 3(b), the value of such consideration or proceeds shall be determined in accordance with the method set forth in such merger agreement, asset purchase agreement or other definitive transaction document, as applicable.

(iv) Notice of Transaction. Upon (i) any taking by the Company 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 or other distribution, or (ii) any Acquisition or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, any Asset Transfer or any Liquidation Event, the Company shall mail to each holder of Preferred Stock at least ten days prior to the record date specified therein (or such shorter period approved by at least sixty percent (60%) of the outstanding shares of Preferred Stock, voting as a single class and on an as-converted basis) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer or Liquidation Event is expected

to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer or Liquidation Event.

(v) **Effect of Noncompliance.** In the event the requirements of this Section 3(b) are not complied with, the Corporation shall forthwith either cause the closing of the Liquidation Event 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 the Series A Preferred shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the notice referred to in Section 3(b)(iv) hereof.

#### 4. **CONVERSION RIGHTS.**

The holders of Preferred Stock shall have the following rights with respect to the conversion of the Preferred Stock into shares of Common Stock (the "Conversion Rights"):

(a) **Right to Convert.** Each share of Series A Preferred 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 the Series A Preferred, into that number of fully paid, nonassessable shares of Common Stock determined by dividing the Series A Original Issue Price by the Series A Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The number of shares of Common Stock into which each share of Series A Preferred may be converted is hereinafter referred to as the "Series A Conversion Rate." The initial conversion price per share of Series A Preferred (the "Series A Conversion Price") shall be equal to the Series A Original Issue Price. Upon any decrease or increase in the Series A Conversion Price, the Series A Conversion Rate shall be appropriately increased or decreased. Each share of Series A-1 Preferred 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 the Series A-1 Preferred, into that number of fully paid, nonassessable shares of Common Stock determined by dividing the Series A-1 Original Issue Price by the Series A-1 Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The number of shares of Common Stock into which each share of Series A-1 Preferred may be converted is hereinafter referred to as the "Series A-1 Conversion Rate." The initial conversion price per share of Series A-1 Preferred (the "Series A-1 Conversion Price") shall be equal to the Series A-1 Original Issue Price. Upon any decrease or increase in the Series A-1 Conversion Price, the Series A-1 Conversion Rate shall be appropriately increased or decreased.

#### (b) **Automatic Conversion.**

(i) Each share of Series A Preferred shall automatically be converted into fully paid, non-assessable shares of Common Stock, at the then-effective Series A Conversion Rate, and each share of Series A-1 Preferred shall automatically be converted into

fully paid, non-assessable shares of Common Stock, at the then-effective Series A-1 Conversion Rate, (A) upon the receipt by the Corporation of a written request for such conversion from the holders of at least sixty percent (60%) of the Preferred Stock then outstanding, or, if later, the effective date for conversion specified in such requests, or (B) immediately prior to the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company which results in aggregate gross proceeds to the Company of at least \$30,000,000 (a "Qualified Public Offering").

(ii) Upon the occurrence of either of the events specified in Section 4(b)(i) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however,* that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders thereof shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred Stock. Thereupon, there shall be issued and delivered to each such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(e).

(c) **Mechanics of Conversion.** Each holder of Preferred Stock who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the principal corporate office of the Company or any transfer agent for such series of Preferred Stock, and shall give written notice to the Company at such office that such holder elects 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. Such notice shall state the number of shares of Preferred Stock being converted. Thereupon, the Company shall promptly 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 is entitled and shall promptly pay (i) in cash or, at the option of the holders of at least sixty percent (60%) of the then outstanding shares of Preferred Stock, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Preferred Stock being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Preferred Stock. 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 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.

**(d) Issuance of Additional Stock Below the Applicable Conversion Price.**

(1) (A) If the Company shall issue or sell, or is deemed by the express provisions of this Section 4(d) to have issued or sold, after the date upon which any shares of Series A-1 Preferred Stock are first issued (the "Purchase Date") any Additional Stock (as defined below) without consideration or for a consideration per share less than the Series A Conversion Price and/or Series A-1 Conversion Price in effect immediately prior to the issuance of such Additional Stock (other than pursuant to Section 4(e)), the Series A Conversion Price and/or Series A-1 Conversion Price, as applicable, in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Series A Conversion Price and/or Series A-1 Conversion Price by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such then-existing Series A Conversion Price or Series A-1 Conversion Price, as applicable; and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of such Additional Stock.

(B) No adjustment of the Series A Conversion Price or Series A-1 Conversion Price shall be made in an amount less than one cent per share, provided that any adjustments that 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 for in subsections 4(d)(i)(B)(3) and 4(d)(i)(E)(4), no adjustment of such Series A Conversion Price and/or Series A-1 Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Series A Conversion Price above the Series A Conversion Price in effect immediately prior to such adjustment or of increasing the Series A-1 Conversion Price above the Series A-1 Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid 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 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 value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance (whether before, on or after the 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 subsection 4(d):

(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 subsections 4(d)(i)(C) and 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the 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 or 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 subsections 4(d)(i)(C) and 4(d)(i)(D)).

(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 (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), the Series A Conversion Price and/or Series A-1 Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed 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 the 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 Series A Conversion Price and/or Series A-1 Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that 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 subsections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

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

(A) Common Stock issued pursuant to a transaction described in subsection 4(e) hereof;

(B) Common Stock and/or options, warrants or other Common Stock purchase rights issued to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary pursuant to stock purchase or stock option plans or other incentive or compensatory arrangements that are approved by the Board of Directors;

(C) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions, the principal purpose of which is other than primarily equity financing, provided, in each case, that such issuance is approved by the Board of Directors of the Corporation;

(D) Shares of Common Stock or Preferred Stock issuable upon exercise of options or warrants outstanding as of the date of filing of these Amended and Restated Articles of Incorporation;

(E) Capital stock, or warrants or options to purchase capital stock, issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation;

(F) Shares of Common Stock issued or issuable upon conversion of the Series A Preferred or Series A-1 Preferred;

(G) Shares of Common Stock issued or deemed issued pursuant to subsection 4(d)(i)(E) as a result of a decrease in the Series A Conversion Price or Series A-1 Conversion Price resulting from the operation of Section 4(d);

(H) Shares of Common Stock issued or issuable in a public offering; and

(I) Capital stock issued or issuable to an entity as a component of any business relationship with such entity for the purpose of strategic relationships such as joint ventures, technology licensing, development activities or distribution, supply or manufacture of the Corporation's products or services, the principal purpose of which is other than primarily equity financing, provided, in each case, that such issuance is approved by the Board of Directors of the Corporation.

(c) **Adjustment for Stock Splits, Subdivisions, Dividends, Distributions and Combinations.** If the Company, at any time after the Purchase Date, makes or fixes 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 Series A Conversion Price and the Series A-1 Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred and Series A-1 Preferred shall be increased in proportion to such increase of 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 issuances in subsection 4(d)(i)(E). 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 Series A Conversion Price and Series A-1 Conversion Price 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.

(f) **Other Distributions.** In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(e), then, in each such case for the purpose of this subsection 4(f), the holders of the 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 this 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 this Corporation entitled to receive such distribution.

**(g) Recapitalizations and Reorganizations; Adjustment of Conversion Price.**

(i) If at any time after the Purchase Date, there is a recapitalization or reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in Section 3(b) or a stock split, subdivision, dividend, distribution or combination provided for elsewhere in this Section 4), as a part of such recapitalization or reorganization, provision shall be made so that the holders of the Preferred Stock so effected shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such recapitalization or reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. 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 Series A Preferred and Series A-1 Preferred after the recapitalization or reorganization to the end that the provisions of this Section 4 (including adjustment of the Series A Conversion Price and Series A-1 Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred and Series A-1 Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(ii) If at any time after the Purchase Date, any shares of Common Stock issued prior to the reorganization in which Series A-1 Stock was first issued ("Pre-Reorg Common," which includes for purposes of this clause any securities or other property into which such Pre-Reorg Common has been converted or exchanged) are surrendered back to the Company as a result of a claim of indemnity against the Company (a "Company Surrender"), the then-effective Series A Conversion Price will be adjusted by multiplying it by the percentage resulting from dividing (i) the number of shares of Pre-Reorg Common that were held immediately after the reorganization by the shareholders whose shares are being surrendered, minus any shares of Pre-Reorg Common surrendered in a prior Company Surrender by the shareholders who held Pre-Reorg Common immediately after the reorganization by (ii) the number of shares of Pre-Reorg Common referred to in the preceding clause minus the number of shares of Pre-Reorg Common that are surrendered by those same shareholders in the Company Surrender. Notwithstanding any other provision hereof, under no circumstance shall the Series A Conversion Price be reduced pursuant to this Section 4(g)(ii) by more than a cumulative amount equal to \$0.1670, regardless of the number of adjustments to the Series A Conversion Price made pursuant to this Section 4(g)(ii).

(iii) If at any time after the Purchase Date, any shares of Common Stock issued in the reorganization in which Series A-1 Stock was first issued ("Reorg Common," which includes for purposes of this clause any securities or other property into which such Reorg Common has been converted or exchanged) are surrendered back to the Company as a result of a claim of indemnity against the shareholders of the acquired entity in such reorganization (the "Target Surrender"), the then-effective Series A-1 Conversion Price will be

adjusted by multiplying it by the percentage resulting from dividing (i) the number of shares of Reorg Common that were held immediately after the reorganization by the shareholders whose shares are being surrendered, minus any shares of Reorg Common surrendered in a prior Target Surrender by the shareholders who held Reorg Common immediately after the reorganization by (ii) the number of shares of Reorg Common in the preceding clause minus the number of shares of Reorg Common held by those same shareholders that are surrendered in the Target Surrender. Notwithstanding any other provision heretof, under no circumstance shall the Series A-1 Conversion Price be reduced pursuant to this Section 4(g)(iii) by more than a cumulative amount equal to \$0.1951, regardless of the number of adjustments to the Series A-1 Conversion Price made pursuant to this Section 4(g)(iii).

(h) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A Conversion Price or Series A-1 Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series A Preferred or Series A-1 Preferred, to the extent shares of such series are then convertible pursuant to this Section 4, the Company, at its expense, shall promptly compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series A Preferred or Series A-1 Preferred, as the case may be, at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Stock issued or sold or deemed to have been issued or sold, (ii) the applicable Series A Conversion Price or Series A-1 Conversion Price, as the case may be, at the time in effect, (iii) the number of shares of Additional Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Preferred Stock. In addition, this Corporation shall, upon the written request at any time of any holder of Series A Preferred or Series A-1 Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (A) any adjustments and readjustments to the Series A Conversion Price or the Series A-1 Conversion Price, as applicable, (B) the Series A Preferred Conversion Price or Series A-1 Conversion Price, as applicable, then time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A Preferred or Series A-1 Preferred.

(i) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon 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 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 any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

(j) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common

Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Company 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, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Articles of Incorporation.

(k) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given upon receipt or, if earlier, (a) five days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid; (b) upon delivery, if delivered by hand; (c) one business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid; or (d) one business day after the business day of facsimile transmission (with confirmation), if delivered by facsimile transmission with copy by first class mail, postage prepaid, and shall be addressed to each holder of record at such holder's address appearing on the books of the Corporation.

(l) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income, capital gains or similar taxes) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered.

(m) **No Dilution or Impairment.** Without the consent of the requisite holders of then outstanding Preferred Stock as required under Section 2 and applicable law, the Company shall not amend its Amended and Restated Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against dilution or other impairment.

(n) **Notices of Record Date.** In the event of any taking by this 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, this Corporation shall mail to each holder of Preferred Stock, at least ten (10) 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 or distribution, and the amount and character of such dividend or distribution.

**5. NO REISSUANCE OF PREFERRED STOCK.**

No share or shares of Preferred Stock acquired by the Company by reason of redemption, repurchase, conversion or otherwise shall be reissued by the Company.

**6. REPURCHASE OF SHARES.**

In connection with repurchases by the Corporation of its Common Stock pursuant to its agreements with certain of the holders thereof, Sections 502 and 503 of the California General Corporation Law shall not apply in whole or in part with respect to such repurchases.

**F.** The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

**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 the 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 RIGHTS.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section E.3, hereof.

**3. 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 law.

**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 General Corporation Law) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California General Corporation Law, subject only to the applicable limits set forth in Section 204 of the California General Corporation Law with respect to actions for breach of duty to the Corporation and its shareholders.

**C.** Any repeal or modification of the foregoing provisions of this Article IV by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification."



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

4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the California General Corporation Law. The total number of outstanding shares of the Corporation is 36,560,698 shares of Common Stock and 15,829,210 shares of Series A Preferred Stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required under law and the Articles of Incorporation in effect at the time of this amendment was more than 50% of the outstanding Common Stock, more than 60% of the outstanding Series A Preferred, and more than 50% of the outstanding Common Stock and Series A Preferred, voting together as a single class.

[Remainder of page left blank intentionally]

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate with regard to these Amended and Restated Articles of Incorporation are true and correct of our own knowledge.

Date: March 16, 2005

Michael Weinstein  
Michael Weinstein, President

Chris M. Burns  
Chris Burns, Secretary

