

2467825

A0613209

FILED
The office of the Secretary of State
of the State of California

JUN 16 2004

Kevin Shelley
KEVIN SHELLEY, Secretary of State

AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
EDISON CARTER CORPORATION, INC.

Stephen Russell and Timothy D. Ross certify that:

(i) They are the Chief Executive Officer and Secretary, respectively, of Edison Carter Corporation, Inc., a California corporation (the "Company").

(ii) The Articles of Incorporation of the Company are hereby amended and restated in full to read in their entirety as set forth in EXHIBIT A attached hereto, which is incorporated by reference as if fully set forth herein.

(iii) Said Amended and Restated Articles of Incorporation have been duly approved by the Board of Directors of this Company.

(iv) Said Amended and Restated Articles of Incorporation have been duly approved by the required vote of the shareholders of the Company entitled to vote in accordance with the Articles of Incorporation of this Company and Sections 902 and 903 of the California Corporations Code. The total number of shares entitled to vote with respect to the foregoing Amended and Restated Articles of Incorporation was 15,095,000 shares of Common Stock. The number of shares voting in favor of the Amended and Restated Articles of Incorporation equaled or exceeded the vote required. The percentage vote required was greater than a majority of the outstanding shares of Common Stock.

The undersigned declare under penalty of perjury that the matters set forth in this certificate are true and correct of their own knowledge.

Date: June 16, 2004
San Francisco, California

Stephen Russell
Chief Executive Officer

Timothy D. Ross

Timothy D. Ross
Secretary

AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
EDISON CARTER CORPORATION, INC.

Stephen Russell and Timothy D. Ross certify that:

(i) They are the Chief Executive Officer and Secretary, respectively, of Edison Carter Corporation, Inc., a California corporation (the "Company").

(ii) The Articles of Incorporation of the Company are hereby amended and restated in full to read in their entirety as set forth in EXHIBIT A attached hereto, which is incorporated by reference as if fully set forth herein.

(iii) Said Amended and Restated Articles of Incorporation have been duly approved by the Board of Directors of this Company.

(iv) Said Amended and Restated Articles of Incorporation have been duly approved by the required vote of the shareholders of the Company entitled to vote in accordance with the Articles of Incorporation of this Company and Sections 902 and 903 of the California Corporations Code. The total number of shares entitled to vote with respect to the foregoing Amended and Restated Articles of Incorporation was 15,095,000 shares of Common Stock. The number of shares voting in favor of the Amended and Restated Articles of Incorporation equaled or exceeded the vote required. The percentage vote required was greater than a majority of the outstanding shares of Common Stock.

The undersigned declare under penalty of perjury that the matters set forth in this certificate are true and correct of their own knowledge.

Date: June 16, 2004
San Francisco, California


Stephen Russell
Chief Executive Officer

Timothy D. Ross
Secretary

EXHIBIT A

ARTICLE I

The name of the company is "Edison Carter, Inc." (the "Company").

ARTICLE II

The purpose of the Company 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 under the California Corporations Code.

ARTICLE III

The address of the Company's agent for service of process in the State of California is Suite 902, 410 Jessie Street, San Francisco, California 94103. The name of its agent at such address is Stephen Russell, Chief Executive Officer.

ARTICLE IV

1. **Authorized Shares.** The Company is authorized to issue two classes of stock, designated "**Common Stock**" and "**Preferred Stock**," respectively. The total number of shares that the Company is authorized to issue is 34,750,000 shares, no par value. The number of shares of Common Stock that the Company is authorized to issue is 25,000,000 shares, and the number of shares of Preferred Stock that the Company is authorized to issue is 9,750,000 shares, 9,750,000 of which shall be designated "**Series A Preferred Stock**."

2. **Stock Split.** Immediately upon the filing of these Amended and Restated Articles of Incorporation with the Secretary of State of the State of California (the "**Effective Time**"), each four (4) shares of the Company's Common Stock outstanding immediately prior to the Effective Time will be combined and converted, automatically and without further action, into one (1) share of Common Stock (the "**Stock Split**"). Such Stock Split shall be effected on a holder-by-holder basis, and any fractional shares resulting from such Stock Split (after aggregating fractional shares on a holder-by-holder basis) shall be rounded up to the nearest whole share. At the Effective Time, the certificates of each holder representing pre-Stock Split shares of Common Stock held by such holder will be deemed for all corporate purposes to evidence ownership of such number of post-Stock Split shares of Common Stock of such holder as results from application of the immediately preceding sentence, whether or not any or all of the certificates for shares of such Common Stock shall have been surrendered or new certificates evidencing post-Stock Split shares have been issued. All references to numbers and amounts in these Amended and Restated Articles of Incorporation that are subject to adjustment upon the occurrence of events in the nature of the Stock Split shall not adjust as a result of the Stock Split, but rather, the amounts stated in the text of these Amended and Restated Articles of Incorporation shall be deemed to already incorporate the effects of the Stock Split.

ARTICLE V

The rights, preferences, privileges and restrictions granted to and imposed upon the Common Stock and Series A Preferred Stock are as follows:

1. Definitions. For purposes of this Article V, the following definitions shall apply:

(a) "Distribution" shall mean (i) the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or (ii) the purchase or redemption of shares of the Company for cash or property other than: (A) repurchases of Common Stock pursuant to agreements providing for the right of said repurchase, (B) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Company or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, or (C) the repurchase of capital stock of the Company in connection with the settlement of disputes with any shareholder.

(b) "Liquidation Preference" shall mean \$0.57 per share for the Series A Preferred Stock (as appropriately adjusted for any Recapitalization and as otherwise set forth elsewhere herein).

(c) "Original Issue Date" shall mean the date upon which the first share of Series A Preferred Stock is first issued.

(d) "Original Issue Price" shall mean \$0.57 per share for the Series A Preferred Stock (as appropriately adjusted for any Recapitalization and as otherwise set forth elsewhere herein).

(e) "Recapitalization" shall mean any stock split, stock dividend, combination, reclassifications or similar event occurring after the Original Issue Date.

2. Dividends.

(a) Dividend Preference. The holders of outstanding shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets at the time legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock of this Company) on the Common Stock of the Company, at the rate of 8% of the Original Issue Price per share per annum on each outstanding share of Series A Preferred Stock, when, as and if declared by the Board of Directors of the Company (the "Board of Directors"); provided, however, that the Board of Directors is under no obligation to pay dividends to such holders, and such dividends, if any, shall be noncumulative. No rights shall accrue to the holders of the Series A Preferred Stock if dividends are not declared in any prior year. If and to the extent that after payment or setting aside for payment of the dividends provided for in the first sentence of this paragraph, the Board of Directors shall declare and set aside for payment any further amount of cash or property as a Distribution (other than a Distribution pursuant to Section 3 hereof), such Distribution shall be made with equal priority to the Common Stock and the Series A Preferred Stock, with each share of Series A Preferred Stock being treated for such purpose as if it had been converted into Common Stock at the then effective Conversion Rate (as defined in Section 4(a)). For such purposes, all shares of Series A Preferred Stock held by each holder of Series A Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be disregarded.

(b) Priority of Dividends. The Company shall make no Distribution (as defined above) to the holders of shares of Common Stock in any fiscal year unless and until dividends at the rate set forth in subsection (a) above shall have been paid upon all shares of Series A Preferred Stock.

(c) Consent to Certain Distributions. As authorized by Section 402.5(c) of the California Corporations Code, if Section 502 or Section 503 of the California Corporations Code is applicable to a payment made by the Company then such applicable section or sections shall not apply if such payment is a payment made by the Company in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Company or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Company or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchases of Common Stock in connection with the settlement of disputes with any shareholder, or (iv) any other repurchase or redemption of Common Stock approved by the holders of Preferred Stock of the Company.

3. Liquidation Rights. In the event of any liquidation, dissolution, or winding up of the Company (or the deemed occurrence of such event pursuant to subsection 3(c) below) (a "Liquidation Event"), either voluntary or involuntary, distributions to the shareholders of the Company shall be made in the following manner:

(a) Amount of Liquidation Preference. The holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets or surplus funds of the Company to the holders of Common Stock by reason of their ownership of such stock, an amount per share equal to the sum of (i) the Liquidation Preference specified for each share of Series A Preferred Stock then held by them, and (ii) all declared but unpaid dividends on such shares of the Series A Preferred Stock. If, upon a Liquidation Event, the assets and funds thus available for distribution among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of their full aforesaid preferential amount, then the entire amount of the assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the aggregate Liquidation Preference, plus all declared and unpaid dividends on the Series A Preferred Stock, for the shares of such Series A Preferred Stock owned by each such holder.

(b) Distribution after Payment of Liquidation Preference. After the payments to the holders of Series A Preferred Stock of the full preferential amounts specified above, the entire remaining assets of the Company legally available for distribution by the Company shall be distributed ratably among the holders of Common Stock in proportion to the numbers of shares of Common Stock held by them.

(c) Deemed Liquidation. For purposes of this Section 3, unless otherwise agreed by holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting together as a single class, a liquidation, dissolution or winding up of the Company shall be deemed to be occasioned by, or to include: (a) a merger or consolidation of the Company with or into any other entity or entities (but excluding any merger effected solely for the purpose of reincorporating into another state) or the merger of any other entity or entities into the Company, in either case in which the shareholders of the Company receive distributions in cash or securities of another entity or entities as a result of such consolidation or merger, and in which the shareholders of the Company, immediately prior to such merger or consolidation, hold, immediately after such merger or consolidation, less than a majority of the outstanding voting securities of the surviving or successor entity or its parent, or (b) a sale, lease or other conveyance of all or substantially all of the assets of the Company (each of (a) and (b), an "Acquisition or Asset Transfer").

(d) Non-Cash Distribution. Whenever the Distribution provided for in this Section 3 shall be payable in securities or property other than cash, the value of such Distribution shall be the fair market value of such securities or other property as determined in good faith by the Board of Directors, except that unless otherwise valued in a merger or acquisition agreement approved by the Company's

shareholders, any publicly-traded securities to be distributed to shareholders in a liquidation, dissolution, or winding up of the Company shall be valued as follows:

(i) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the distribution.

(iii) In the event of a merger or other acquisition of the Company by another entity, the distribution date shall be deemed to be the date such transaction closes.

For the purposes of this Section 3(d), "trading day" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "closing prices" or "closing bid prices" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or Nasdaq, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

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

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Company or any transfer agent for the Series A Preferred Stock, into that number of fully-paid and nonassessable shares of Common Stock that is equal to the Original Issue Price divided by the appropriate Conversion Price. The initial Conversion Price (the "Conversion Price") per share of Series A Preferred Stock shall be the Original Issue Price and shall be subject to adjustment as provided herein. The number of shares of Common Stock into which each share of Series A Preferred Stock may be converted is hereinafter referred to as the "Conversion Rate." Upon any decrease or increase in the Conversion Price for a share of Series A Preferred Stock, as described in this Section 4, the corresponding Conversion Rate for such share of Series A Preferred Stock shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into fully paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share immediately upon the earlier of (i) the consummation of an underwritten public offering of Common Stock registered under the Securities Act of 1933, as amended, at a price per share (prior to underwriting commissions and offering expenses) which reflects a valuation of the Company (before receipt of any proceeds from the public offering) of at least \$100 million and with aggregate net proceeds to the Company of at least \$25 million (a "Qualified Public Offering") or (ii) the receipt by the Company of a written request for such conversion from the holders of a majority of the Series A Preferred Stock then outstanding, or, if later, the effective date for conversion specified in such requests, voting together as a single class.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled upon conversion of Series A Preferred Stock by such holder (after all fractional shares arising from such holder's conversion have been aggregated into the greatest possible number of whole shares), the Company shall pay cash equal to such fraction multiplied by the then fair market value of such fractional shares as determined by the Board of Directors of the Company. Before any holder of Series A Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, they shall either (i) surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or of any transfer agent for the Series A Preferred Stock or (ii) notify the Company or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates, and shall give written notice to the Company at such office that they elect to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 4(b) above, the outstanding shares of Series A 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, further, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless either the certificates evidencing such shares of Series A Preferred Stock are delivered to the Company or its transfer agent as provided above, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates.

The Company shall, as soon as practicable after such delivery, or after receipt of such agreement and indemnification, if any, issue and deliver at such office to such holder of Series A Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Series A Preferred Stock. 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 Series A 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; provided, however, that if the conversion is in connection with a public offering or a Liquidation Event, the conversion may, at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such public offering, or such Liquidation Event, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing or consummation of the public offering or Liquidation Event.

(d) Conversion Price Adjustments for Sales of Shares Below Conversion Price. The Conversion Price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the Company shall issue, after the Original Issue Date, any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this Section 4(d)(i)) be adjusted to a price determined by multiplying such 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 (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Company for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of

shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock.

(B) No adjustment of the Conversion Price shall be made if the amount of such reduction would be less than \$0.01. Except to the limited extent provided for 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 Additional 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 Company for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Additional 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 in good faith by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance (whether before, on or after the applicable Original Issue 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 affecting such stock) of such securities, options to purchase, or rights to subscribe for Common Stock shall be deemed to have been issued at the time such securities, 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 Company upon the issuance of such securities, options or rights plus the minimum exercise price provided in such securities, options or rights (without taking into account potential antidilution adjustments affecting such stock) 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 affecting such stock) 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 Company for any such securities and related options or rights (excluding any cash received by the Company on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Company (without taking into account potential antidilution adjustments affecting such stock) 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 Sections 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 Company upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities (excluding a change resulting from any antidilution provisions contained in such options, rights or securities), the 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 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, 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 all shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Company after the Original Issue Date) other than:

(A) shares of Common Stock issued or issuable 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 arrangements approved by the Board of Directors;

(B) shares of Common Stock issued pursuant to the exercise or conversion of any rights, agreements, options or warrants outstanding or issued as of the date of the filing of this Amended and Restated Certificate of Incorporation;

(C) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial credit or leasing arrangement approved by the Board of Directors;

(D) shares of Common Stock issued or issuable upon conversion of Series A Preferred Stock; and

(E) shares of Common Stock issued in connection with strategic transactions that include a commercial relationship involving the Company and other entities, including (i) joint ventures, manufacturing, marketing or distribution arrangements, or (ii) technology transfer, licensing or development arrangements; provided that such issuances have been approved by the Board of Directors.

(e) Adjustments to Conversion Price for Certain Combinations, Distributions, Reclassifications and Reorganizations. The Conversion Price shall be subject to adjustment from time to time as follows:

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

(ii) Adjustments for Other Distributions. In the event the Company at any time or from time to time makes or fixes a record date for the determination of holders of Common Stock entitled to receive any Distribution payable in securities of the Company, then and in each such event provision shall be made so that the holders of Series A Preferred Stock shall receive upon such Distribution the amount of securities of the Company which they would have received had their Series A Preferred Stock converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Series A Preferred Stock.

(iii) Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock immediately before that change.

(iv) Reorganizations, Mergers or Consolidations. If at any time or from time to time, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, merger or consolidation, provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock held by them the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger or consolidation. 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 Stock after the capital reorganization, merger or consolidation to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4, the Company at its expense shall compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A 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 Company shall, upon the written request of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting

forth (i) such adjustments and readjustments, (ii) the Conversion Prices at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Series A Preferred Stock.

(g) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of the Series A Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock. Any such waiver shall bind all future holders of shares of the Series A Preferred Stock.

(h) Notices of Record Date. In the event that the Company shall propose at any time:

(i) to declare any dividend or Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to offer for subscription pro rata to the holders of any class or series of its stock (other than pursuant to contractual agreements entered into with each such holder) any additional shares of stock of any class or series or any other securities or property, or to receive any other rights;

(iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up (other than in connection with a merger, the sole purpose of which is to change the state of the Company's incorporation);

then, in connection with each such event, this Company shall send to the holders of the Series A Preferred Stock at least 10 calendar days' prior written notice of the earlier of (A) the date on which a record shall be taken for such dividend, Distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (iii) and (iv) above or (B) the closing date of such event; provided, however, the notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of a majority of the then outstanding shares of Series A Preferred Stock, voting together as a single class. With regard to the matters referenced in (iii) and (iv) above, such written notice shall describe the material terms and conditions of the proposed transaction.

Each such written notice shall be given as provided in Section 7 below.

(i) 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 Series A Preferred Stock; such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then-outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of the Series A 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 using its best efforts to obtain the requisite shareholder approval for any necessary amendment to this Second Amended and Restated Certificate of Incorporation.

5. Voting. The holders of Series A Preferred Stock and the holders of Common Stock shall vote as a single class except as otherwise required by law or provided herein.

(a) Preferred Stock. Each holder of shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series A Preferred Stock held by such holder of Series A Preferred Stock could then be converted. Except as provided in Subsection 5(c) below, the holders of shares of Series A Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote and may act by written consent in the same manner as the holders of Common Stock. The holders of Series A Preferred Stock 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 resulting from the above formula (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted), shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

(c) Election of Directors. So long as at least 2,000,000 shares (as adjusted for Recapitalizations) of Series A Preferred Stock remain outstanding, the holders of Series A Preferred Stock, voting as a separate class, shall be entitled to elect two (2) 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. In the case of any vacancy in the office of a director elected by the holders of Series A Preferred Stock, the holders of the then outstanding Series A Preferred Stock shall be entitled, voting as a separate class either by written consent or at a special meeting, to elect a successor to hold office for the unexpired term of the director whose place shall be vacant. The holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) 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. In the case of any vacancy in the office of a director elected by the holders of Common Stock, the holders of the then outstanding Common Stock shall be entitled, voting as a separate class either by written consent or at a special meeting, to elect a successor to hold office for the unexpired term of the director whose place shall be vacant. Any additional members of the Company's Board of Directors shall be elected by the holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted to Common Stock basis.

6. Protective Provisions.

(a) No Series Voting. Other than as provided herein or by law, there shall be no voting by Series A Preferred Stock as a separate class.

(b) Approval by Class. For so long as at least 2,000,000 shares of Series A Preferred Stock remain outstanding (as adjusted for Recapitalizations), the Company shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of at least a majority of the total number of shares of the Series A Preferred Stock then outstanding:

(i) amend, alter or repeal any provision of the Amended and Restated Articles of Incorporation of the Company if such action would alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Series A Preferred Stock;

(ii) authorize or designate, whether by classification or otherwise, any new class or series of stock or any other securities convertible into equity securities of the Company ranking pari passu with or senior to the Series A Preferred Stock, including, but not limited to, in right of conversion, liquidation preference, voting or dividends;

- (iii) increase the number of shares authorized for issuance under any existing stock or option plan or create any new stock or option plan;
- (iv) effect a liquidation, dissolution, wind-up, recapitalization or reorganization of the Company;
- (v) effect any Acquisition or Asset Transfer;
- (vi) increase or decrease the size of the Board of Directors;
- (vii) materially change the Company's business as it is carried out, and as it is contemplated to be carried out, on the Original Issue Date;
- (viii) enter into a material agreement or arrangement with any employee, officer, director or shareholder of the Company, or any member of their immediate families;
- (ix) remove or replace the Company's auditors or general corporate counsel;
- (x) sell, transfer or license any material asset or intellectual property of the Company (other than sales of products or services or grants of licenses to customers in the ordinary course of business) to any person other than a wholly-owned subsidiary of the Company; or
- (xi) declare or pay any dividends or Distributions on Common Stock or redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Series A 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 Company or any subsidiary pursuant to agreements under which this Company has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment.

7. Notices. Any notice, demand, offer, request or other communication required or permitted to be given by the Company to the holders of Series A Preferred Stock pursuant to this Article V shall be in writing and shall be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one (1) business day after being delivered by facsimile or by email (with receipt of appropriate confirmation), (iv) one (1) business day after being deposited with an overnight courier service or (v) four (4) days after being deposited in the U.S. mail, First Class with postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Company.

ARTICLE VI

1. Limitation of Directors' Liability. The liability of the directors of this Company for monetary damages shall be eliminated to the fullest extent permissible under California law.

2. Indemnification of Corporate Agents. This Company is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with agents, votes of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to the applicable limits set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to this Company and its shareholders.

3. Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection of an agent of this Company relating to acts or omissions occurring prior to such repeal or modification.