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**FILED**  
in the office of the Secretary of State  
of the State of California

MAY 04 2006

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

**OF**

**ARIO DATA NETWORKS, INC.**

Russell Krapf and Louis Hsieh certify that:

**FIRST:** They are the President and Secretary, respectively, of ARIO Data Networks, Inc., a corporation organized and existing under the laws of the State of California, and:

**SECOND:** The Articles of Incorporation of the Corporation are amended and restated, in their entirety, to read as follows:

**ARTICLE I.**

The name of the corporation is ARIO Data Networks, Inc. (the "Corporation").

**ARTICLE II.**

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

**ARTICLE III.**

The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock". The aggregate number of shares that the Corporation is authorized to issue is 277,000,000. 160,000,000, par value \$0.001 per share, shall be Common Stock and 117,000,000, par value \$0.001 per share, shall be Preferred Stock. 2,000,000 shares of Preferred Stock are designated "Series A Preferred Stock," 3,200,000 shares of Preferred Stock are designated "Series B Preferred Stock," 45,100,000 shares of Preferred Stock are designated "Series C Preferred Stock," 36,700,000 shares of Preferred Stock are designated "Series D Preferred Stock" and 30,000,000 shares of Preferred Stock are designated "Series D-1 Preferred Stock". The Series A Preferred Stock and the Series B Preferred Stock are sometimes referred to collectively herein as the "Junior Preferred Stock."

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

**A. Preferred Stock**

**1. Dividend Provisions.**

(a) Preference.

(i) *Series D-1 Senior Dividend Preference.* The holders of shares of Series D-1 Preferred Stock shall be entitled to receive dividends, out of any assets or funds of the Corporation legally available therefor and prior and in preference to any declaration or payment of any dividend (other than a dividend payable in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Series D Preferred Stock, Series C Preferred Stock, Junior Preferred Stock or Common Stock of the Corporation, at the rate of 8% of the Original Issue Price (as defined below) per annum on each outstanding share of Series D-1 Preferred Stock (in each case as adjusted for stock splits, stock dividends, recapitalizations, reclassification and the like), payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

(ii) *Series D Senior Dividend Preference.* After payment of such dividends pursuant to Section 1(a)(i) above, the holders of shares of Series D Preferred Stock shall be entitled to receive dividends, out of any assets or funds of the Corporation legally available therefor and prior and in preference to any declaration or payment of any dividend (other than a dividend payable in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Series C Preferred Stock, Junior Preferred Stock or Common Stock of the Corporation, at the rate of 8% of the Original Issue Price (as defined below) per annum on each outstanding share of Series D Preferred Stock (in each case as adjusted for stock splits, stock dividends, recapitalizations, reclassification and the like), payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

(iii) *Junior Dividend Preference.* After payment of such dividends pursuant to Sections 1(a)(i) and 1(a)(ii) above, the holders of shares of Series C Preferred Stock and Junior Preferred Stock shall be entitled to receive dividends, out of any assets or funds of the Corporation legally available therefor and prior and in preference to any declaration or payment of any dividend (other than a dividend payable in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of 8% of the Original Issue Price (as defined below) per annum on each applicable outstanding share of Series C Preferred Stock and Junior Preferred Stock, as applicable, (in each case as adjusted for stock splits, stock dividends, recapitalizations, reclassification and the like), payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

(iv) The "Original Issue Price" is \$0.50 per share for the Series A Preferred Stock, \$1.00 per share for the Series B Preferred Stock, \$0.2952 for the Series C Preferred Stock, \$0.465 for the Series D Preferred Stock and \$0.51 for the Series D-1 Preferred Stock.

(b) Payment of Dividends After Preference. After payment of such dividends pursuant to Section 1(a) above, any additional dividends shall be distributed among the

holders of the Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock then held by each holder (on an as-if converted to Common Stock basis).

(c) Restriction on Dividends to Common Stock. The Corporation shall not pay or declare any dividend, whether in cash or in property, or make any other distribution on the Common Stock (other than a dividend payable in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation), or purchase, redeem or otherwise acquire for value any shares of Common Stock (other than repurchases of shares of Common Stock upon termination of employment or service as a consultant or director, or through the exercise of any right of first refusal, in each case pursuant to agreements providing for such repurchase) until all dividends as set forth in Section 1(a) above shall have been declared and paid on all shares of Preferred Stock.

(d) Consent to Certain Repurchases. The holders of the Preferred Stock expressly waive their rights, if any, as described in California Corporations Code Sections 502 and 503 as they relate to repurchases of share of Common Stock upon termination of employment or service as a consultant or director pursuant to agreements providing for such right of repurchase.

2. Liquidation.

(a) Non-Participating Preference.

(i) Series D-1 Liquidation Preference. In the event of any liquidation, dissolution or winding up, including, without limitation, a Sale Transaction (as defined below), of the Corporation (a "Liquidation Transaction"), either voluntary or involuntary, the holders of the Series D-1 Preferred Stock then outstanding shall be entitled to receive, in a non-participating manner, out of any funds and assets that may be legally distributed to the Corporation's shareholders and prior and in preference to any distribution of any such funds or assets to the holders of Series D Preferred Stock, Series C Preferred Stock, Junior Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to the Original Issue Price for the Series D-1 Preferred Stock (as defined in Article III Section A. 1(a)(iv)) for each share of Series D-1 Preferred Stock then held by them (as adjusted for stock splits, stock dividends, recapitalizations, reclassification and the like), plus all declared but unpaid dividends on the Series D-1 Preferred Stock (the "Series D-1 Liquidation Preference"). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series D-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series D-1 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(ii) Series D Liquidation Preference. In the event of a Liquidation Transaction, either voluntary or involuntary, and following payment of the Series D-1 Liquidation Preference, the holders of the Series D Preferred Stock then outstanding shall be

entitled to receive, in a non-participating manner, out of any funds and assets that may be legally distributed to the Corporation's shareholders and prior and in preference to any distribution of any such funds or assets to the holders of Series C Preferred Stock, Junior Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to 125% of the Original Issue Price for the Series D Preferred Stock (as defined in Article III Section A.1(a)(iv)) for each share of Series D Preferred Stock then held by them (as adjusted for stock splits, stock dividends, recapitalizations, reclassification and the like), plus all declared but unpaid dividends on the Series D Preferred Stock (the "Series D Liquidation Preference"). If, upon the occurrence of such event (and after payment of the Series D-1 Liquidation Preference), the assets and funds thus distributed among the holders of the Series D Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series D Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(iii) *Series C Liquidation Preference.* In the event of a Liquidation Transaction, either voluntary or involuntary, and following payment of the Series D-1 Liquidation Preference and the Series D Liquidation Preference, the holders of the Series C Preferred Stock then outstanding shall be entitled to receive, in a non-participating manner, out of any funds and assets that may be legally distributed to the Corporation's shareholders and prior and in preference to any distribution of any such funds or assets to the holders of Junior Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to 125% of the Original Issue Price for the Series C Preferred Stock (as defined in Article III Section A.1(a)(iv)) for each share of Series C Preferred Stock then held by them (as adjusted for stock splits, stock dividends, recapitalizations, reclassification and the like), plus all declared but unpaid dividends on the Series C Preferred Stock (the "Series C Liquidation Preference"). If, upon the occurrence of such event (and after payment of the Series D-1 Liquidation Preference and the Series D Liquidation Preference), the assets and funds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(iv) *Junior Liquidation Preference.* In the event of any Liquidation Transaction, either voluntary or involuntary, and following payment of the Series D-1 Liquidation Preference, the Series D Liquidation Preference and the Series C Liquidation Preference, the holders of the Junior Preferred shall be entitled to receive, in a non-participating manner, out of any funds and assets that may be legally distributed to the Corporation's shareholders and parri passu with each other and prior and in preference to any distribution of any of such funds and assets to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the Original Issue Price for each share of Junior Preferred Stock then held by them (as adjusted for stock splits, stock dividends, recapitalizations, reclassification and the like), plus all declared but unpaid dividends on such Junior Preferred Stock (the "Junior Liquidation Preference"). If, upon the occurrence of such event (and after payment of the Series D-1 Liquidation Preference, the Series D Liquidation Preference and the Series C Liquidation Preference), the assets and funds thus distributed among the holders of the

Junior Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, the entire remaining assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Junior Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(v) *Subsequent Liquidation Preference.* In the event that the Corporation shall issue any capital stock that entitles the holder to payment of a liquidation preference, payment, or other similar right to distributions of the Corporation prior or in preference to the holders of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock, the holders of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock shall receive an equal right to such liquidation preference, payment or other similar right to distributions of the Corporation.

(b) Distribution after Liquidation Preferences. Upon the completion of the distributions required by Section 2(a) above (or if there are no shares of Preferred Stock outstanding upon the occurrence of a Liquidation Transaction), if any assets or funds remain in the Corporation that may be legally distributed to the Corporation's shareholders, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation.

(c) Certain Acquisitions.

(i) *Distribution upon Sale Transaction.* In the event of a Sale Transaction (as defined below), then upon the closing of such Sale Transaction, each holder of Preferred Stock shall be entitled to receive for each share of Preferred Stock then held, out of the proceeds of such Sale Transaction that may be legally distributed to the Corporation's shareholders, the greater of (i) the amount of cash, securities or other property to which such holder would be entitled to receive pursuant in a liquidation by virtue of the Series D-1 Liquidation Preference, Series D Liquidation Preference, the Series C Liquidation Preference or the Junior Liquidation Preference, as the case may be, or (ii) the amount of cash, securities or other property to which such holder would be entitled to receive in a liquidation; if such holder had converted such shares of Preferred Stock into Common Stock immediately prior to the closing of such Sale Transaction.

(ii) *Sale Transaction Defined.* A "Sale Transaction" shall mean (A) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization own less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Corporation is a party in which more than 50% of the Corporation voting power is transferred or (C) the sale or other disposition (whether by sale, lease, exclusive, irrevocable license or otherwise) of all or substantially all of the Corporation's assets, intellectual property or business; *provided, however*, that none of the following shall be considered a Sale Transaction: (i) a merger effected exclusively for the purpose of changing the domicile of the Corporation, (ii) an equity financing in which the Corporation is the surviving corporation, or (iii) any transaction in which a majority

of the voting power of the then outstanding shares of Preferred Stock have agreed in writing shall not be deemed to be a Sale Transaction.

(iii) *Valuation of Consideration.* If the consideration received in a Sale Transaction is other than cash, its value will be deemed to be its fair market value as determined in good faith by the Corporation's Board of Directors and at least a majority of the outstanding shares of Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock (voting as a single class, not as separate series, and on an as-converted basis) unless otherwise provided herein. 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 The Nasdaq Stock Market ("Nasdaq"), the value shall be based on a formula approved by the Board of Directors and at least a majority of the outstanding shares of Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock (voting as a single class, not as separate series, and on an as-converted basis) and derived from the closing prices of the securities on such exchange or Nasdaq over a specified time period;

(2) If actively traded over-the-counter, the value shall be based on a formula approved by the Board of Directors and at least a majority of the outstanding shares of Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock (voting as a single class, not as separate series, and on an as-converted basis) and derived from the closing bid or sales prices (whichever is applicable) of such securities over a specified time period; 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 and at least a majority of the outstanding shares of Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock (voting as a single class, not as separate series, and on an as-converted basis).

(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 specified above in the immediately preceding Subsection (A) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors and at least a majority of the outstanding shares of Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock (voting as a single class, not as separate series, and on an as-converted basis).

(iv) Notice of Liquidation Transaction. The Corporation shall give each holder of record of Preferred Stock written notice of any impending Liquidation Transaction not later than 20 days prior to the shareholders' meeting called to approve such Liquidation Transaction, or 20 days prior to the closing of such Liquidation Transaction.

whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Transaction. The first of such notices shall describe the material terms and conditions of the impending Liquidation Transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The Liquidation Transaction shall in no event take place sooner than 20 days after the Corporation has given the first notice provided for herein (or any subsequent notice of material changes). Notwithstanding the other provisions of these Restated Articles, this and all other notice periods or requirements in these Restated Articles may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of a majority of the voting power of the outstanding shares of Preferred Stock that are entitled to such notice rights.

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

### 3. Redemption.

(a) Series C, Series D and Series D-1 Redemption. At any time after May 3, 2010, but on a date (the "Redemption Date") within 60 days after receipt by the Corporation of a written request (a "Redemption Election") from the holders of not less than two-thirds (2/3) of the then outstanding Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock (voting as a single class, not as separate series, and on an as-converted basis) that all or some of the shares of such series be redeemed, the Corporation shall, to the extent it may lawfully do so, redeem up to that number of shares specified in the Redemption Election in accordance with the procedures set forth in this Section 3 by paying in cash therefor a sum per share equal to the Original Issue Price per share of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock, (in each case as adjusted for stock splits, stock dividends, recapitalizations, reclassification and the like) plus all declared but unpaid dividends on such shares (the "Redemption Price"). Any redemption effected pursuant to this Section 3(a) shall be made available on a pro rata basis among the holders of the Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock based upon the total Redemption Price applicable to each holder's shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock.

(b) Procedure. Within 7 days following its receipt of the Redemption Election, the Corporation shall mail a written notice, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares eligible to be redeemed from such holder, the Redemption Date, the applicable Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and

at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). The holder of any shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock may exercise such holders' redemption rights as to such shares or any part thereof, subject to the limitations set forth in Section 3(c) hereof, by delivering to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock or at such other place as may be designated by the Corporation in the Redemption Notice, at any time within 30 days following the date of receipt of such Redemption Notice by the holder, a written notice (each a "Holder's Notice") stating that such holder elects to have redeemed all or part of the shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock held by the holder which are eligible for redemption in accordance with the Redemption Notice. On or after the Redemption Date, each holder of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock that has elected to have shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. As promptly as practicable after receipt of the surrendered certificate or certificates (and in no event more than 10 days following the Redemption Date) the Corporation shall issue and deliver to or upon the written order of such holder, at such office or other place designated by the holder: (A) a check for cash with respect to the shares so redeemed and (B) in the event less than all the shares represented by any such certificate are redeemed, a new certificate representing the unredeemed shares.

(c) Effect of Redemption; Insufficient Funds. From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock designated for redemption in Holders' Notices (except the right to receive the Redemption Price without interest upon surrender of their share certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock on the Redemption Date are insufficient to redeem the total number of shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon the total Redemption Price applicable to the shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock for which each holder has requested redemption on such date pursuant to a Holder's Notice. The shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock,



such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on the Redemption Date but which it has not redeemed.

(d) Status of Redeemed Stock. Any shares of Preferred Stock redeemed pursuant this Section 3 shall be cancelled and shall not be reissuable by the Corporation, and these Restated Articles shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock

(e) Junior Preferred Stock Redemption. The Junior Preferred Stock is not redeemable.

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

(a) Optional Conversion. Subject to Section 4(c), each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price applicable to such share (in each case as adjusted for stock splits, stock dividends, recapitalizations, reclassification and the like) by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The "Conversion Price" for the Preferred Stock from and after the date of effectiveness of these Amended and Restated Articles of Incorporation shall be \$0.50 for the Series A Preferred Stock, \$1.00 for the Series B Preferred Stock, \$0.2952 for the Series C Preferred Stock, \$0.465 for the Series D Preferred Stock and \$0.51 for the Series D-1 Preferred Stock. Such Conversion Prices shall be subject to adjustment as set forth in Section 4(d).

(b) Automatic Conversion. Except as provided below in Section 4(c), each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), the public offering price of which results in a market capitalization of the Corporation of not less than \$150,000,000 and which results in aggregate gross cash proceeds to the Corporation of not less than \$30,000,000 (a "Qualified IPO"). Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately on the date specified by written consent or agreement of the holders of at least two-thirds (2/3) of the then outstanding shares of Preferred Stock (voting as a single class, not as separate series, and on an as-converted basis).

(c) Mechanics of Conversion.

(i) Optional Conversion. Before any holder of Preferred Stock shall be entitled to convert such Preferred Stock into shares of Common Stock pursuant to Article III.A.4(a) hereof, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred

Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such optional 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 such series 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 public Common Stock as of such date. If the optional conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any persons entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) *Automatic Conversion.* Upon the occurrence of an automatic conversion pursuant to Article III.A.4.(b) above, the outstanding shares of Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation 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 Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders of Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to 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.

(d) Conversion Price Adjustments upon Certain Events. The Conversion Prices of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) *Issuance of Additional Stock Below Purchase Price.* If the Corporation should issue, at any time after the effective date of these Amended and Restated Articles of Incorporation (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the applicable Conversion Price for the Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock

in effect immediately prior to the issuance of such Additional Stock, then forthwith upon such issuance, the Conversion Price for such affected series shall be reduced to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of such Additional Stock. For purposes of this Section 4(d)(i), the term "Common Stock Outstanding" shall mean and include the following: (1) outstanding Common Stock, (2) Common Stock issuable upon conversion of outstanding Preferred Stock, (3) Common Stock issuable upon exercise of outstanding stock options and (4) Common Stock issuable upon exercise (and, in the case of warrants to purchase Preferred Stock, conversion) of outstanding warrants. Shares described in (1) through (4) above shall be included whether vested or unvested, whether contingent or non-contingent and whether exercisable or not yet exercisable.

(A) *Definition of "Common Stock Equivalents".*

For purposes of this Section 4(d)(i), "Common Stock Equivalents" shall mean securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock.

(B) *Definition of "Additional Stock".*

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

(1) Common Stock issued pursuant to stock dividends, stock splits or similar transactions, as described in Section 4(d)(ii) hereof;

(2) Common Stock issued or issuable to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation;

(3) Common Stock or Preferred Stock, or options or warrants to purchase Common Stock or Preferred Stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions, the terms of which are approved by the Board of Directors of the Corporation, subject to the cap on such issuances set forth below;

(4) Common Stock or Preferred Stock, or warrants or options to purchase Common Stock or Preferred 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, subject to the cap on such issuances set forth below;

(5) Shares of Common Stock issued or issuable upon conversion of the Preferred Stock;

(6) Shares of Common Stock issued or issuable in a Qualified IPO;

(7) Shares of Common Stock or Preferred Stock issued or issuable to customers, vendors, contractors, advisors and other service providers (including, without limitation service providers providing management and executing recruiting services) pursuant to agreements or other arrangements, the terms of which are approved by the Board of Directors of the Corporation, subject to the cap on such issuances set forth below;

(8) Common Stock that is issued with the unanimous approval of the Board of Directors and the Board of Directors specifically states that it shall not be Additional Stock; and

(9) Series D-1 Preferred Stock and the Common Stock issued or issuable upon conversion thereof.

provided, however, that the total number of shares of Common Stock (on an as converted, as exercised basis) issuable or issued pursuant to subsections (3), (4) and (7) above shall not exceed, in the aggregate, 2,000,000 shares (subject to appropriate adjustments for stock splits, stock dividends, recapitalizations and the like).

(C) *No Fractional Adjustments.* No adjustment of the Conversion Price for the Series D-1 Preferred Stock, Series D Preferred Stock or Series C Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) *Determination of Consideration.* 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. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors and at least two-thirds (2/3) of the outstanding shares of Series D-1 Preferred Stock, Series D Preferred Stock and Series C Preferred Stock (as a single class, not as separate series, and on an as-converted basis), irrespective of any accounting treatment.

(E) *Deemed Issuances of Common Stock.* In the case of the issuance (whether before, on or after the applicable Purchase Date) of any Common Stock Equivalents, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon conversion, exchange or exercise (assuming the satisfaction of any conditions to convertibility, exchangeability or exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of any Common Stock Equivalents and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such securities were issued or such Common Stock Equivalents were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related Common Stock Equivalents (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, exchange or exercise of any Common Stock Equivalents (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(2) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of the Series C Preferred Stock, Series D Preferred Stock, or Series D-1 Preferred Stock to the extent in any way affected by or computed using such Common Stock Equivalents, 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 conversion, exchange or exercise of such Common Stock Equivalents.

(3) Upon the termination or expiration of the convertibility, exchangeability or exercisability of any Common Stock Equivalents, the Conversion Price of the Series D-1 Preferred Stock, Series D Preferred Stock or Series C Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Common Stock Equivalents that remain convertible, exchangeable or exercisable) actually issued upon the conversion, exchange or exercise of such Common Stock Equivalents.

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

(F) *No Increased Conversion Price.* Notwithstanding any other provisions of this Section (4)(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(2) and 4(d)(i)(E)(3), no adjustment of the 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.

(ii) *Stock Splits and Dividends.* In the event that the Corporation should at any time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders

of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series 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 Section 4(d)(i)(E).

(iii) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

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

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the holders of the Preferred Stock 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 Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation (except in accordance with Section 5 hereof and applicable law) or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but

will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

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

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded up to the next nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

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

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

(j) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of 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 such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Restated Articles.

(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 if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

(l) Status of Converted Stock. Any shares of Preferred Stock converted pursuant this Section 4 shall be cancelled and shall not be reissuable by the Corporation, and these Restated Articles shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

5. Voting Rights; Directors.

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

(b) Board of Directors.

(i) *Number and Composition of Board.* At each meeting of shareholders at which members of the Board of Directors are to be elected, or whenever members of the Board of Directors are to be elected by written consent of the shareholders (and subject to Section 603(d) of the California Corporations Code), (i) the holders of the Series C Preferred Stock, voting together as a separate class, shall be entitled to elect two (2) members of the Board of Directors (the "Series C Directors"). (ii) the holders of the Common Stock, voting together as a separate class, shall be entitled to elect two (2) members of the Board of Directors (the "Common Directors"). (iii) the holders of the Series D Preferred Stock, voting together as a separate class, shall be entitled to elect one (1) member of the Board of Directors (the "Series D Director") and (ii) the holders of Preferred Stock (voting together as a single class, not as separate series, and on an as-converted basis) shall be entitled to elect the remaining members of the Board of Directors (the "Industry Directors").

(ii) *Vacancies.* In the case of any vacancy in the office of a director occurring among the directors elected by the holders of a specific class or series in accordance with the provisions of Section 5(b)(i) above, a majority of the holders of such class or series shall elect a successor or successors to serve for the unexpired term of the director whose office is vacant.

(c) Protective Provisions.



(1) So long as at least fifty percent (50%) of the shares of Series D-1 Preferred Stock that are originally issued remain outstanding, except as otherwise required by applicable law and as otherwise required by these Amended and Restated Articles of Incorporation, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least fifty percent (50%) of the then outstanding Series D-1 Preferred Stock, voting separately as a class:

(a) increase or decrease (other than by conversion or in accordance with these Amended and Restated Articles of Incorporation) the total number of authorized shares of Series D-1 Preferred Stock; or

(b) declare or pay any dividend on any shares of the Corporation's Common Stock or Preferred Stock in preference to the Series D-1 Preferred Stock.

(2) So long as at least fifty percent (50%) of the shares of Series D Preferred Stock that are originally issued remain outstanding, except as otherwise required by applicable law and as otherwise required by these Amended and Restated Articles of Incorporation, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding Series D Preferred Stock, voting separately as a class:

(a) effect a Liquidation Transaction;

(b) authorize or issue, or obligate itself to issue, any other equity security, including any security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series D Preferred Stock with respect to any rights, preferences or privileges;

(c) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock other than in accordance with the redemption provisions of these Restated Articles; provided, however, that this restriction shall not apply to repurchases of shares of Common Stock upon termination of employment or service as a consultant or director, or through the exercise of any right of first refusal, in each case pursuant to agreements providing for such repurchase);

(d) materially amend or repeal any provision of the Corporation's Articles of Incorporation or By-laws;

(e) increase or decrease the authorized number of directors on the Board of Directors;

(f) declare or pay any dividend on any shares of the Corporation's Common Stock or Preferred Stock, except in accordance with Section 1 hereof;

(h) increase the number of shares of Common Stock issuable under the Corporation stock or stock option plans to more than 30,000,000 shares; or

(j) permit any subsidiary of the Corporation to sell any securities other than a sale of such subsidiary's securities to the Corporation.

(3) So long as at least fifty percent (50%) of the shares of Series D Preferred Stock that are originally issued remain outstanding, except as otherwise required by applicable law and as otherwise required by these Amended and Restated Articles of Incorporation, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding Series D Preferred Stock, voting separately as a class:

(a) take any action that materially alters or changes the rights, preferences or privileges of the shares of Series D Preferred Stock; or

(b) increase or decrease (other than by conversion or in accordance with these Amended and Restated Articles of Incorporation) the total number of authorized shares of Series D Preferred Stock.

(4) So long as at least fifty percent (50%) of the shares of Series C Preferred Stock that are originally issued remain outstanding, except as otherwise required by applicable law and as otherwise required by these Amended and Restated Articles of Incorporation, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding Series C Preferred Stock, voting separately as a class:

(a) effect a Liquidation Transaction;

(b) take any action that materially alters or changes the rights, preferences or privileges of the shares of Series C Preferred Stock;

(c) increase or decrease (other than by conversion or in accordance with these Amended and Restated Articles of Incorporation) the total number of authorized shares of Series C Preferred Stock;

(d) authorize or issue, or obligate itself to issue, any other equity security, including any security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series C Preferred Stock with respect to any rights, preferences or privileges;

(e) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock other than in accordance with the redemption provisions of these Restated Articles; provided, however, that this restriction shall not apply to repurchases of shares of Common Stock upon termination of employment or service as a consultant or director, or through the exercise of any right of first refusal, in each case pursuant to agreements providing for such repurchase);

(f) materially amend or waive any provision of the Corporation's Articles of Incorporation or By-laws;

(g) increase or decrease the authorized number of directors on the Board of Directors;

(h) increase the number of shares of Common Stock issuable under the Corporation stock or stock option plans to more than 30,000,000 shares;

(i) declare or pay any dividend on any shares of the Corporation's Common Stock or Preferred Stock, except in accordance with Section 1 hereof; or

(j) permit any subsidiary of the Corporation to sell any securities other than a sale of such subsidiary's securities to the Corporation.

(5) Except as otherwise required by applicable law and as otherwise required by these Amended and Restated Articles of Incorporation, the corporation 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 Series A Preferred, voting separately as a class:

(a) take any action that alters or changes the rights, preferences or privileges of the shares of Series A Preferred Stock; or

(b) increase or decrease (other than by conversion or in accordance with these Amended and Restated Articles of Incorporation) the total number of authorized shares of Series A Preferred Stock.

(6) Except as otherwise required by applicable law and as otherwise required by these Amended and Restated Articles of Incorporation, the corporation 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 Series B Preferred, voting separately as a class:

(a) take any action that alters or changes the rights, preferences or privileges of the shares of Series B Preferred Stock; or

(b) increase or decrease (other than by conversion or in accordance with these Amended and Restated Articles of Incorporation) the total number of authorized shares of Series B Preferred Stock.

## **B. Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of 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 occurrence of a Liquidation Transaction, the assets of the Corporation shall be distributed as provided in Section 2 of Article III(A).

3. **Redemption.** The Common Stock is not redeemable.

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

#### ARTICLE IV

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

B. **Indemnification of Agents.** The Corporation is authorized to provide indemnification of agents (as described in Section 317 of the California Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors, or otherwise, to the fullest extent permissible under California law.

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

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**THIRD:** The foregoing Amended and Restated Articles of Incorporation has been duly approved by the Board of Directors.

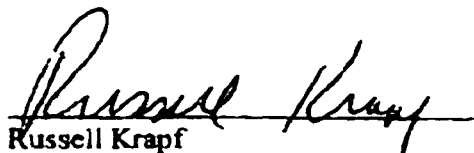
**FOURTH:** The foregoing amendment and restatement of the Corporation's Articles of Incorporation has been duly approved by the required vote of the shareholders of the Corporation in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares of the Corporation is 6,293,156 shares of Common Stock, 2,000,000 shares of Series A Preferred Stock, 3,200,000 shares of Series B Preferred Stock, 44,113,505 shares of Series C Preferred Stock and 36,497,072 shares of Series D Preferred Stock. The number of shares voting in favor of the foregoing amendment and restatement of the Corporation's Articles of Incorporation equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%) of the outstanding shares of Common Stock, more than fifty percent (50%) of the outstanding shares of Preferred Stock, more than fifty percent (50%) of the outstanding shares of Series A Preferred Stock, more than fifty percent (50%) of the outstanding shares of Series B Preferred Stock, more than two-thirds (2/3) of the outstanding shares of Series C Preferred Stock and more than two-thirds (2/3) of the outstanding shares of Series D Preferred Stock.

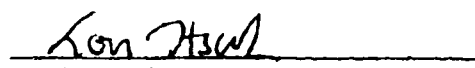
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penalty of perjury

The undersigned further declare under \_\_\_\_\_ under the laws of the State of California that the matters set forth in this Certificate are true and correct of our own knowledge.

Executed at San Jose, California on May 4, 2005

  
Russell Krapf

  
Louis Hsieh