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

**FIFTH AMENDED AND RESTATED  
ARTICLES OF INCORPORATION OF  
APHERMA CORPORATION**

NOV 24 2004

*Kevin Shelley*  
KEVIN SHELLEY, Secretary of State

Zezhang Hou and Sherman Fan certify that:

1. They are the President and Secretary, and the Chief Financial Officer respectively, of APHERMA Corporation, a California corporation (the "Corporation"). The Corporation was originally incorporated on July 20, 1999 under the laws of the State of California as Audia Technology, Inc.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

**ARTICLE I**

The name of this Corporation is APHERMA Corporation.

**ARTICLE II**

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

**ARTICLE III**

(a) The total number of shares of all classes of stock which the Corporation is authorized to issue is 142,972,000, consisting of 71,486,000 shares of Common Stock and 71,486,000 shares of Preferred Stock, of which 10,993,000 shares are designated as Series A Preferred Stock, 10,993,000 shares are designated as Series A1 Preferred Stock, 18,500,000 shares are designated as Series B Preferred Stock, and 31,000,000 shares are designated as Series B1 Preferred Stock. The Series A Preferred Stock, Series A1 Preferred Stock, Series B Preferred Stock and Series B1 Preferred Stock, are collectively referred to herein as "Preferred Stock."

(b) A statement of the rights, preferences, privileges and restrictions granted to or imposed on the Preferred Stock and the holders thereof is as follows:

(1) Dividends. The holders of the Preferred Stock shall be entitled to receive, out of any funds legally available therefor, dividends at a rate of \$0.04 per share of Series A Preferred Stock and Series A1 Preferred Stock and \$0.048 per share of Series B Preferred Stock and Series B1 Preferred Stock, per annum when and if declared by the Board of Directors, payable in preference and priority to any dividend on Common Stock when, if and as declared by the Board of Directors. No dividends shall be made with respect to the Common Stock until all declared dividends on the Preferred Stock have been paid or set aside for payment to the Preferred Stock holders and a dividend equivalent to the Common Stock dividend is paid or declared and set aside for payment to holders of the Preferred Stock, calculated on an as-converted basis, with the shares of Preferred Stock being treated for this purpose as if they had been converted to shares of Common Stock at the then applicable Conversion Price for such series of Preferred Stock. Payment of any dividends to the holders of the Preferred Stock shall be on a pro-rata, pari passu basis in proportion to the dividends for each series of Preferred Stock. The right to such dividends on the Preferred Stock or Common Stock shall not be cumulative, and no right shall accrue to holders of Preferred Stock or Common Stock by reason of the fact that dividends or such shares are not declared or paid in any prior year.

(2) Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of Series A1 Preferred Stock and Series B1 Preferred Stock (the "Senior Preferred Stock") shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A Preferred Stock, Series B Preferred Stock and Common Stock by reason of their ownership thereof, \$1.00 per share of Series A1 Preferred Stock and \$1.20 per share of Series B1 Preferred Stock (as adjusted for stock dividends, stock splits, combination of shares, reclassification and the like with respect to such series of Preferred Stock), plus any declared but unpaid dividends on the Series A1 Preferred Stock and the Series B1 Preferred Stock (the "Senior Liquidation Preference Amounts").

If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of Senior Preferred Stock then outstanding of all Senior Liquidation Preference Amounts described above in this Section 2(a), then the entire assets of the Corporation available for such distribution shall be distributed ratably among the holders of the Senior Preferred Stock in proportion to the full Senior Liquidation Preference Amount each such holder is otherwise entitled to receive.

(b) After the payment or setting aside for payment to the holders of Senior Preferred Stock of the full amounts specified in Section 2(a) above, the holders of Series A Preferred Stock and Series B Preferred Stock (the "Junior Preferred Stock") shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, \$0.50 per share of Series A Preferred Stock and \$1.20 per share of Series B Preferred Stock (as adjusted for stock dividends, stock splits, combination of shares, reclassification and the like with respect to such series of Preferred Stock), plus any declared but unpaid dividends on the Series A Preferred Stock and Series B Preferred Stock (the "Junior Liquidation Preference Amounts").

If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of Junior Preferred Stock then outstanding of all Junior Liquidation Preference Amounts described above in this Section 2(b), then the entire assets of the Corporation available for such distribution shall be distributed ratably among the holders of the Junior Preferred Stock in proportion to the full Junior Liquidation Preference Amount each such holder is otherwise entitled to receive.

All remaining assets of the Corporation, if any, shall be distributed with equal priority and pro-rata among the holders of the Common Stock and the Preferred Stock in proportion to the number of shares of Common Stock held by them, with the shares of Preferred Stock being treated for this purpose as if they had been converted to shares of Common Stock at the then applicable Conversion Price.

(c) For purposes of this Section 2, a merger or consolidation of the Corporation with or into any other corporation or corporations, or the merger of any other corporation or corporations into the Corporation (other than any merger or consolidation in which shareholders of the Corporation immediately prior to such merger or consolidation beneficially own a majority of the voting shares of the surviving corporation immediately following such merger or consolidation), or a sale of all or substantially all of the assets of the Corporation, in a transaction or a series of related transactions (any such transaction being a "Sale Transaction") shall be treated as a liquidation, dissolution or winding up of the Corporation. For the avoidance of doubt, the holders of Junior Preferred Stock will not participate in the distribution of assets or surplus funds of the Corporation arising from a Sale Transaction by virtue of the Special Series A Preferred Stock Conversion and Special Series B Preferred Stock Conversion set forth in Section 3(c) and 3(d) below.

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

(a) Right to Convert. Each share of Series A Preferred Stock and Series A1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.50 by the then applicable Series A/A1 Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of Series A Preferred Stock and Series A1 Preferred Stock (the "Series A/A1 Conversion Price") shall initially be \$0.50 per share. Such initial Series A/A1 Conversion Price shall be subject to adjustment as hereinafter provided.

Each share of Series B Preferred Stock and Series B1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.60 by the then applicable Series B/B1 Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of Series B Preferred Stock and Series B1 Preferred Stock (the "Series B/B1 Conversion Price") shall

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initially be \$0.50 per share. Such initial Series B/B1 Conversion Price shall be subject to adjustment as hereinafter provided. The Series A/A1 Conversion Price and Series B/B1 Conversion Price shall sometime be referred to herein as the "Conversion Price."

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then applicable Conversion Price: (i) upon the closing of a firm underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of Common Stock for the account of the Corporation to the public at a price per share of not less than \$5.00 (as adjusted for stock splits, reverse stock splits, stock dividends or combination effected after the date on which the first share of the applicable Preferred Stock is issued (the "Original Issue Date")) and with aggregate gross proceeds to the Corporation of at least \$25,000,000; or (ii) with respect to each such separate series of Preferred Stock, upon the election of the holders of the majority of such series of outstanding Preferred Stock.

(c) Special Series A Preferred Stock Conversion. Immediately prior to the closing of a Sale Transaction (the "Conversion Time"), each share of Series A Preferred Stock shall be automatically converted into 0.2 shares of Series A1 Preferred Stock in accordance with Section 3(e) below.

(d) Special Series B Preferred Stock Conversion. At the Conversion Time, each share of Series B Preferred Stock shall be automatically converted into 0.2 share of Series B1 Preferred Stock in accordance with Section 3(e) below.

(e) Mechanics of Conversion. No fractional shares of Common Stock or Preferred Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional share to which a holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of the applicable Common Stock or Preferred Stock, as determined by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock or Preferred Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that he elects to convert the same. Such notice shall also state whether the holder elects, pursuant to Section 1 hereof, to receive declared but unpaid dividends on the Preferred Stock proposed to be converted in cash, or to convert such dividends into shares of Common Stock or Preferred Stock, as applicable, at their fair market value as determined by the Board of Directors. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock or Preferred Stock, as applicable, to which he 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 a fractional share of Common Stock or Preferred Stock, and any declared but unpaid dividends on the converted Preferred Stock which the holder elected to receive in cash. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock or Preferred

Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock or Preferred Stock on such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act, the conversion shall be conditioned upon the closing of such public offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to such closing. If the conversion is in connection with a Sale Transaction, the conversion shall be conditioned upon the closing of such Sale Transaction, in which event the person(s) entitled to receive the Common Stock or Preferred Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to such closing.

(f) 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 Preferred Stock, such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holders of Preferred Stock, the Corporation will take such corporate actions 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.

(g) Adjustments to Conversion Prices for Diluting Issues.

(i) Special Definitions. For purposes of this section 3, the following definitions shall apply:

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

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

(3) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to paragraph 3(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(A) upon the exercise, exchange, adjustment or conversion of Options or Convertible Securities outstanding as of the date of the filing of these Articles of Incorporation or issued pursuant to that certain Note and Warrant Purchase Agreement dated on or about November 30, 2004 by and between the Corporation and certain investors in the Corporation;

(B) upon conversion of shares of Preferred Stock;

(C) to officers, directors or employees of, consultants or advisors to, the Corporation pursuant to a stock grant, option plan or purchase plan or other employee stock incentive program approved by the Board of Directors, or upon exercise of options or warrants granted to such parties pursuant to any such plan or arrangement (in an amount not to exceed 4,800,000 shares);

(D) to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors (in an amount not to exceed 200,000 shares);

(E) in connection with a bona fide acquisition or merger approved by the Board of Directors;

(F) in connection with stock splits, stock dividends or like transactions;

(G) in connection with any additional issuances approved by the Board of Directors and the holders of a majority of the Preferred Stock; or

(H) in connection with an automatic conversion pursuant to Article III(b)(3)(c) and Article III(b)(3)(d) hereof.

(ii) No Adjustment of Conversion Price: No adjustment in the applicable Conversion Price of a particular share of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to such issue, for such share of Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options (except for Options issued pursuant to paragraph (3)(g)(i)(3)(C)) or Convertible Securities (except for Convertible Securities issued pursuant to paragraph (3)(g)(i)(3) above) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to paragraph 3(g)(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price for any series of Preferred Stock in effect on the date of and immediately prior to such issue, or such record date, as

the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustment in the applicable Conversion Price for any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof (other than under or by reason of provisions designed to protect against dilution), the applicable Conversion Price for any series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; and

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the applicable Conversion Price for any series of Preferred Stock to an amount which exceeds the lower of (i) the applicable Conversion Price on the original adjustment date, or (ii) the applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation shall issue, at any time after the Original Issue Date, Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to paragraph (3)(g)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price for any series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, such applicable Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price determined by multiplying such applicable Conversion Price for such series of Preferred Stock by a fraction, the numerator of which shall be the number of shares of Common Stock, Preferred Stock, Options and Convertible Securities outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such applicable Conversion Price; and the denominator of which shall be the number of shares of Common Stock, Preferred Stock, Options and Convertible Securities outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued.

(v) Determination of Consideration. For purposes of this section 3(g), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and

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

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to paragraph (3)(g)(iii), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by (y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Adjustments for Subdivisions, Combinations, or Consolidations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided or combined, by reclassification or otherwise, into a greater or lesser number of shares of Common Stock, the applicable Conversion Price for any series of Preferred Stock in effect immediately prior to such subdivision or combination shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

(vii) Stock Splits and Dividends. In the event the Corporation should at any time or from time to time after the Original Issue Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by



such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the applicable Conversion Price for any series of 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.

(viii) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the Original Issue Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the applicable Conversion Price for any series of 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.

(h) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Price for any series of Preferred Stock pursuant to this Section 3, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such series of 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 (i) such adjustments and readjustments, (ii) the applicable Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Preferred Stock.

(4) Voting Rights.

(a) Voting Other than for Directors. Except as otherwise required by law, and as provided in subsection (b) below with respect to the election of directors, the holders of the Preferred Stock and the holders of Common Stock shall be entitled to notice of any shareholders' meeting and to vote as a single class upon any matter submitted to the shareholders for a vote, as follows: (i) each holder of Senior Preferred Stock shall have one vote for each full share of Common Stock into which its respective shares of Senior Preferred Stock would be convertible on the record date for the vote; (ii) each holder of Junior Preferred Stock shall have one vote for each five shares of Common Stock into which its respective shares of Junior Preferred Stock would be convertible on

the record date for the vote and (iii) each holder of Common Stock shall have one vote per share of Common Stock.

(b) Voting for Directors. The holders of shares of Series B1 Preferred Stock, voting as a separate class, shall be entitled to elect two (2) directors. The holders of shares of Series A1 Preferred Stock, voting as a separate class, shall be entitled to elect two (2) directors. The holders of shares of Common Stock, voting as a separate class, shall be entitled to elect two (2) directors. One (1) director shall be an independent director elected by the Common Stock and Preferred Stock, voting together as a class. Any remaining directors shall be elected by the holders of the Preferred Stock and Common Stock voting together as a class. Any vacancy in the Board of Directors occurring because of the death, resignation or removal of a director elected by the holders of Series B1 Preferred Stock voting as a class shall be filled by the vote or written consent of the holders of the Series B1 Preferred Stock. Any vacancy in the Board of Directors occurring because of the death, resignation or removal of a director elected by the holders of Series A1 Preferred Stock voting as a class shall be filled by the vote or written consent of the holders of the Series A1 Preferred Stock. Any vacancy in the Board of Directors occurring because of the death, resignation or removal of a director elected by the holders of Common Stock voting as a class shall be filled by the vote or written consent of the holders of the Common Stock. Any vacancy in the Board of Directors occurring because of the death, resignation or removal of a director elected by the holders of Common Stock and Preferred Stock voting together as a class shall be filled by the vote or written consent of the holders of the Common Stock and Preferred Stock.

(5) Protective Provisions.

(a) Preferred Stock. In addition to any other rights provided by law, so long as any Preferred Stock shall be outstanding, this Corporation shall not, without first obtaining the written consent of the holders of a majority of such outstanding shares of Preferred Stock voting together as a class on an as-converted to Common Stock basis:

(i) alter or change the preferences, rights or privileges of the Preferred Stock so as to adversely affect such shares;

(ii) authorize the issuance of securities, or reclassify outstanding securities into securities, having parity or any preference or priority as to dividends, redemption, conversion, voting, assets, liquidation preference, protective provisions or otherwise superior to or on a parity with any such preference or priority of the Preferred Stock;

(iii) apply any assets of the Corporation to the redemption, retirement, purchase or other acquisition directly or indirectly through subsidiaries or otherwise, of any shares of Preferred Stock or Common Stock except from employees, officers, directors or consultants of the Corporation upon termination of their status as such pursuant to an agreement containing vesting and/or repurchase provisions approved by the Board of Directors of this Corporation;

- (iv) increase or decrease the authorized number of shares of Preferred Stock;
- (v) effect any merger, reorganization, sale or other conveyance of all or substantially all of the assets of the Corporation, including any transaction in which more than 50% of the voting power of the Corporation is disposed of;
- (vi) engage in a related party transaction;
- (vii) reclassify or recapitalize any of the Corporation's outstanding capital stock;
- (viii) alter the size of the Board of Directors;
- (ix) declare or pay any dividends;
- (x) increase the number of authorized shares under the Corporation's stock incentive plan; or
- (xi) any transfer or grant of rights in any of the Corporation's technology other than licenses that are incidental to sales of the Corporation's products in the ordinary course of business.

#### ARTICLE IV

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

(b) Indemnification of Corporate Agents. This Corporation is authorized to indemnify the directors and officers of the Corporation to the fullest extent permissible under California law as the same exists or as may hereafter be amended.

(c) Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article IV by the shareholders of the Corporation shall be prospective only and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

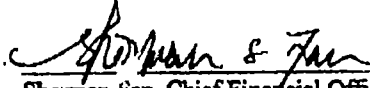
3. The foregoing Fifth Amended and Restated Articles of Incorporation have been duly approved by the Board of Directors.


4. The foregoing Fifth Amended and Restated Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the Corporations Code. The total number of outstanding shares of each class or series entitled to vote with respect to this amendment and restatement is as follows: 3,011,999 shares of Common Stock, 10,993,000 shares of Series A Preferred Stock and 12,232,212 shares of Series B Preferred Stock.

The number of shares voting in favor of this amendment and restatement equaled or exceeded the vote required. The percentage vote required was greater than 50% of the outstanding shares of Common Stock voting as a class, greater than two-thirds (2/3) of the outstanding shares of Series A Preferred Stock voting as a class and greater than two-thirds (2/3) of the outstanding shares of Series B Preferred Stock voting as a class.

The undersigned declare under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing certificate are true of their own knowledge.

IN WITNESS WHEREOF, the undersigned have executed this certificate this November 24, 2004.

  
Sherman Fan, Chief Financial Officer

  
Zezhang Hou, President and Secretary