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**FILED**

in the office of the Secretary of State  
of the State of California

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JUN 06 2005 *cm*

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
BELLAMAX, INC.**

Julie Wainwright and James F. Fulton certify that:

1. They are the President and Secretary respectively of Bellamax, Inc., a California corporation.

2. The Articles of Incorporation of this corporation, as amended, are hereby amended and restated to read as follows:

I.

The name of this corporation is Bellamax, Inc.

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.

III.

(a) This corporation is authorized to issue two classes of shares to be designated respectively Preferred Stock ("Preferred") and Common Stock ("Common"). The total number of shares of Preferred this corporation shall have authority to issue is 14,000,000, and the total number of shares of Common this corporation shall have authority to issue is 23,000,000.

(i) This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common, solely for the purpose of effecting the conversion of the shares of the Preferred, such number of its shares of Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred. This corporation shall from time to time, in accordance with the laws of the State of California, increase the authorized amount of its Common if at any time the number of Common shares remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred.

(ii) Effective immediately upon the filing of this Amended and Restated Articles of Incorporation (1) each outstanding share of Common shall be automatically combined into 1/100<sup>th</sup> of a share of Common; (2) each outstanding share of the Corporation's Series A Preferred shall be automatically converted into 1/100<sup>th</sup> of a share of Common; and (3) each outstanding share of the Corporation's Series B Preferred shall be automatically converted into 1/100<sup>th</sup> of a share of Common (collectively, the combinations and conversions referenced in subsections (1) through (3) of this paragraph shall hereinafter be referred to as the "Reverse Stock Split"). No fractional shares shall issue in connection with the Reverse Stock Split, and cash based on the fair market value of the Common, as determined in good faith by the Corporation's Board of Directors, shall be paid in lieu of any fractional share.

(b) 14,000,000 shares of the Preferred are designated Series A-1 Preferred Stock (the "Series A-1 Preferred"), none of which are issued and outstanding. The Series A-1 Preferred shall have the rights, preferences, privileges and restrictions set forth in paragraph (c) below.

(c) The relative rights, preferences, privileges and restrictions granted to or imposed upon the respective classes and series of the shares of capital stock or the holders thereof are as follows:

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

(a) "Junior Shares" shall mean all Common and any other shares of this corporation other than the Preferred.

(b) "Original Issue Date" shall mean the date on which a share of Series A-1 Preferred was first issued.

(c) "Subsidiary" shall mean any corporation at least 50% of whose outstanding voting shares shall at the time be owned by this corporation and/or one or more of such subsidiaries.

Section 2. Dividend Rights of Preferred. The holders of the Series A-1 Preferred shall be entitled to receive, out of any funds legally available therefor, prior and in preference to any declaration or payment of any dividend on the Junior Shares, cash dividends in the amount of (i) \$0.0285 per share per annum on each outstanding share of Series A-1 Preferred (as adjusted to reflect stock splits, stock dividends, combinations, consolidations, reorganizations, recapitalizations and the like) if, when, and as declared by the Board of Directors, out of funds legally available thereof. The right to such dividends on the Preferred shall not be cumulative, and no right shall accrue to holders of the Preferred if dividends on such shares are not declared or paid in any prior year. Dividends and distributions may be paid (or declared and set aside for payment) upon shares of Common in any calendar year only if dividends shall have been paid (or declared and set aside for payment) on account of all shares of Preferred then issued and outstanding, at the foregoing rate. In the event dividends are paid on any share of Common, the corporation shall pay an additional dividend on all outstanding shares of Preferred in a per share amount equal (on an as-if-converted to Common basis) to the amount paid or set aside for each share of Common.

In the event that this corporation shall have declared any unpaid dividends outstanding immediately prior to, and in the event of, a conversion of the Preferred (as provided in Section 5 hereof), this corporation shall pay in cash to the holder(s) of the Preferred, subject to such conversion, the full amount of any such dividends.

Section 3. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, the holders of the Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of this corporation to the holders of the Common by reason of their ownership thereof, the amount of \$0.57 per share for each share of Series A-1 Preferred then held by them (as adjusted to reflect stock splits, stock dividends, combinations, consolidations, reorganizations, recapitalizations and the like) and, in addition, an amount equal to all declared but unpaid dividends on such Preferred. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Preferred shall be insufficient to permit the payment of the full preferential amount to such holders, then the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of the Preferred. After full payment has been made to the holders of the Preferred of the foregoing amounts to which they shall be entitled, the remaining assets of this corporation available for distribution to shareholders shall be distributed ratably among the holders of the Preferred and

Junior Shares based on the number of shares of Common held by each of them (calculated assuming conversion of all of the shares of Preferred into Common).

(b) For purposes of this Section 3, a liquidation, dissolution or winding up of this corporation shall include, but is not limited to, any of the following: (i) this corporation's sale of all or substantially all of its assets, (ii) any merger, consolidation or other similar transaction involving this corporation, unless upon the conclusion of such transaction, and after giving effect thereto, the shareholders of this corporation immediately prior to such transaction would continue to own, in substantially the same percentages, more than 50% of the shares of the surviving corporation following such transaction, or (iii) any transaction or series of related transactions to which this corporation is a party in which in excess of 50% of this corporation's voting power is transferred.

(c) For purposes of this Section 3, if the distributions or consideration received by the shareholders of this corporation is other than cash, its value will be deemed to be its fair market value as determined in good faith by the Board of Directors of this corporation. In the case of publicly traded securities listed on an exchange, fair market value shall mean the average last closing sale price for shares of this corporation's Common as reported by such exchange or by a consolidated transaction reporting system for the five-day period immediately preceding the date of such distribution. In the case of publicly traded securities listed on the National Association of Securities Dealers Automatic Quotation System, Inc. (the "Nasdaq"), fair market value shall mean the average last closing bid price as reported for shares of this corporation's Common or such successor or similar organization, for the five-day period immediately preceding the date of such distribution.

#### Section 4. Redemption.

(a) If at any time on or after the fifth anniversary of the Original Issue Date, if this corporation should receive from the holders of a majority of the then outstanding shares of the Series A-1 Preferred a notice of their election to exercise their right under this Section 4 (the "Election Notice") (the date on which the corporation receives the last Election Notice required to constitute a majority of the then outstanding Series A-1 Preferred is referred to herein as the "Redemption Date"), this corporation shall, provided it may lawfully do so, redeem in three annual installments as set forth in Section 4(c) (each an "Annual Redemption Date") all of the shares of the Series A-1 Preferred outstanding on the date of such event in accordance with this Section 4. The number of shares of Series A-1 Preferred that this corporation shall be required to redeem on any Annual Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series A-1 Preferred outstanding immediately prior to the Annual Redemption Date by (B) the number of remaining Annual Redemption Dates (including the Annual Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 4(a) shall be redeemed from each holder of Series A-1 Preferred on a pro rata basis, based on the number of shares then held.

(b) Price. This corporation shall pay for each share of Series A-1 Preferred to be redeemed pursuant to this Section 4, \$0.57 per each share of Series A-1 Preferred (adjusted to reflect stock splits, stock dividends, combinations, consolidations, recapitalizations and the like) and, in addition, an amount equal to all declared but unpaid dividends (the "Redemption Price").

(c) Redemption Date; Notice. Within thirty (30) days after the Redemption Date (the "Notice Date"), written notice shall be mailed, postage prepaid, to each holder of Series A-1 Preferred (each a "Series A-1 Preferred Holder") at the address last shown on the records of this corporation, notifying such Series A-1 Preferred Holder of the redemption to be effected, specifying the number of shares to be redeemed from such Series A-1 Preferred Holder on each Annual Redemption Date, the Annual Redemption Dates, the applicable Redemption Price, and the date on which such Series A-1 Preferred Holder's Conversion Rights (as defined in Section 5) as to such shares terminate (which date shall be the close of business on each Annual

Redemption Date, unless default is made in payment of the Redemption Price) and informing such Series A-1 Preferred Holder of the manner and the place designated for surrender to this corporation of the certificate or certificates representing the portion of the shares of Series A-1 Preferred then held by such Series A-1 Preferred Holder to be redeemed (such notice is hereinafter referred to as the "Redemption Notice"). Within ten (10) days after the Notice Date, each Series A-1 Preferred Holder shall surrender to this corporation the certificate or certificates representing the portion of the shares of Series A-1 Preferred to be redeemed, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be paid by delivery of cash to the order of the person whose name appears on such certificate or certificates as the owner of such shares and each surrendered certificate shall be canceled (the preceding procedure shall be hereinafter referred to as the "Payment"). If a certificate surrendered by a Series A-1 Preferred Holder pursuant to this Section 4(c) represents a number of shares greater than that number of shares with respect to which the Series A-1 Preferred Holder is designating for redemption pursuant to this Section 4, this corporation shall issue and deliver to such Series A-1 Preferred Holder a certificate representing the shares not so redeemed. From and after each Annual Redemption Date, all rights of the Series A-1 Preferred Holder in the Series A-1 Preferred designated for redemption on such Annual Redemption Date in the Redemption Notice (except the right to receive the Redemption Price) shall cease and terminate with respect to such shares, and such shares shall not subsequently be transferred on the books of this corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of this corporation legally available for redemption of shares of Series A-1 Preferred on the Notice Date are insufficient to redeem the total number of shares of Series A-1 Preferred to be redeemed on any Annual Redemption Date, those funds that 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 on such Annual Redemption Date such that each holder of a share of Series A-1 Preferred receives the same percentage of the applicable Redemption Price. The shares of Series A-1 Preferred not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of this corporation are legally available for the redemption of shares of Series A-1 Preferred, such funds will immediately be used to redeem the balance of the shares that this corporation has become obliged to redeem on any Annual Redemption Date but that it has not redeemed.

(d) Deposit. On or prior to the Notice Date, this corporation shall deposit the Redemption Price for all the shares of Series A-1 Preferred designated for redemption in the Redemption Notice with a bank or trust company having aggregate capital and surplus in excess of five hundred million dollars (\$500,000,000) as a trust fund for the benefit of the Series A-1 Preferred Holders, with irrevocable instructions and authority to the bank or trust company to publish a comprehensive Redemption Notice and to pay one-third of the Redemption Price as set forth in Section 4(c) for such shares to the Holders on each Annual Redemption Date, which dates shall be as follows: (i) the first business day following a ten-day period after the Notice Date (the "First Payment Date"); (ii) the first business day that is one year after the First Payment Date; and (iii) the first business day that is two years after the First Payment Date. The balance of any funds deposited by this corporation pursuant to this Section 4(d) remaining unclaimed at the expiration of two (2) years and one (1) month following the last Annual Redemption Date shall be returned to this corporation upon its request expressed in a resolution of its Board of Directors.

Section 5. Conversion. The holders of Preferred shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Preferred, at the option of its holder, at the office of this corporation or any transfer agent for the Preferred, at any time after the date of issuance of such share, shall be convertible into such number of fully paid and nonassessable shares of Common as is determined in the case of the Series A-1 Preferred, by dividing \$0.57 for each share of Series A-1 Preferred by the conversion price in effect at the time of the conversion ("Series A-1 Conversion Price"). The initial Series A-1 Conversion Price shall be \$0.57 for each share of Series A-1 Preferred. The Series A-1 Conversion Price

referred to herein as "Conversion Price". Conversion Price shall be subject to adjustment as hereinafter provided.

(b) Automatic Conversion. Each share of Preferred shall be automatically converted into shares of Common at the then effective Conversion Price applicable to such series of Preferred, upon the earlier of (i) the date that the holders of a majority of the outstanding shares of Preferred, voting together as a single class, consent to such conversion or (ii) upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common for the account of this corporation to the public, provided that the public offering price is not less than \$1.00 per share (as adjusted to reflect stock splits, stock dividends, combinations, consolidations, recapitalizations and the like) and the aggregate gross proceeds to this corporation (after underwriting discounts, commissions and fees) are \$20,000,000 or more. The Preferred shall not be deemed to have converted until immediately prior to closing of such offering.

(c) Mechanics of Conversion. No fractional shares of Common shall be issued upon conversion of any share of Preferred. In lieu of any fractional share to which the holder would otherwise be entitled (after aggregating all shares into which shares of Preferred held by such holder could be converted), this corporation shall pay cash equal to such fraction multiplied by the then fair market value of the Common, as determined by the Board of Directors. Before any holder of Preferred shall be entitled to convert the same into full shares of Common, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the Preferred, and shall give written notice to this corporation at such office that he elects to convert the same. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred, a certificate or certificates for the number of shares of Common to which he shall be entitled, together with a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common. 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 to be converted, or in the case of automatic conversion, on the effective date of the offering as provided in Section 5(b) above, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

(d) Adjustments to Conversion Price for Diluting Issues

(i) Special Definitions. For purposes of this Section 5(d), the following definitions shall apply:

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

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

(3) "Additional Shares" shall mean all shares of Common issued (or, pursuant to Section 5(d)(iii) below, deemed to be issued) after the Original Issue Date, other than shares of Common issued or issuable:

(A) upon conversion of Preferred;

(B) up to 3,000,000 shares of Common (as adjusted to reflect stock splits, stock dividends, combinations, consolidations, recapitalizations and the like) to officers, directors or employees of, or consultants to, this corporation pursuant to a stock grant or stock plans or agreements

approved by the Board of Directors (the "Employee Reserve") or such higher number as approved in writing by holders of a majority in interest of the outstanding Preferred;

(C) up to 100,000 shares (as adjusted to reflect stock splits, stock dividends, combinations, consolidations, recapitalizations and the like) of equity securities to any bank, equipment lessor, creditor, landlord, supplier or customer pursuant to a transaction that is for primarily non-financial purposes and approved by the Board of Directors, or such higher number of shares approved in writing by holders of a majority in interest of the outstanding Preferred;

(D) shares of Common issued pursuant to the exercise of any Convertible Securities outstanding as of the Original Issue Date; and

(E) any equity securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Board of Directors and the holders of a majority of the outstanding Preferred.

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

(iii) Deemed Issue of Additional Shares of Common.

(1) Options and Convertible Securities. In the event, at any time or from time to time after the Original Issue Date, this corporation shall issue any Options or Convertible Securities 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 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 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 shall not be deemed to have been issued as to the Preferred unless the consideration per share (determined pursuant to Section 5(4)(v) hereof) of such Additional Shares of Common would be less than the Conversion Price applicable to such series of Preferred 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 are deemed to be issued:

(A) no further adjustment in the Conversion Price shall be made upon the subsequent issues of Convertible Securities or shares of Common upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to this corporation, or decrease in the number of shares of Common issuable (including a decrease resulting from the expiration of such Options or the rights of conversion or exchange of such Convertible Securities), upon the exercise, conversion or exchange thereof, the Conversion Price 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 as if such Options or Convertible Securities had never been issued; and

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

(2) Share Dividends. In the event this corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common payable in Common, Options or Convertible Securities, the Additional Shares of Common shall be deemed to have been issued immediately after the date of business on the record date for the determination of holders or any class of securities entitled to receive such dividend.

(iv) Initial Adjustment of Conversion Price upon Issuance of Additional Shares. In the event this corporation shall issue Additional Shares (including Additional Shares deemed to be issued pursuant to Section 5(d)(iii)) other than as provided in Sections 5(e) or 5(h) without consideration or for a consideration per share less than the Series A-1 Conversion Price in effect on the date of, and immediately prior to such issue, then, and in such event, such Conversion Price for such series of Preferred shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by the following formula:

$$CP(2) = \frac{CS \times CP(1) + C}{CS + AS}$$

where:

(1) CP(1) = the Conversion Price for such series in effect on the date of and immediately prior to such issue;

(2) CP(2) = the Conversion Price for such series as so adjusted;

(3) CS = the number of shares of Common outstanding immediately prior to such issuance (including shares of Common issuable upon conversion or exercise of any Convertible Securities and the Preferred, or upon exercise of Options outstanding immediately prior to such issuance);

(4) C = the aggregate consideration, if any, received by this corporation for the total number of Additional Shares so issued, provided that if the Additional Shares are issued without consideration then C shall be zero (0); and

(5) AS = the number of such Additional Shares so issued.

and provided further that, immediately after any Additional Shares are deemed issued pursuant to Section 5(d)(iii) and an adjustment of the Conversion Price is made with respect thereto, such Additional Shares shall be deemed to be outstanding shares of Common for the purposes of the foregoing formula as applied to future issuances.

(v) Determination of Consideration. For purposes of this Section 5(d), the consideration received by this corporation for the issue of any Additional Shares 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 this corporation excluding amounts paid or payable for accrued interest or accrued dividends, and provided further that no deduction shall be made for any commissions or expenses paid or incurred by this corporation for any underwriting of the issue or otherwise in connection therewith;

(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 in good faith by the Board of Directors; and

(C) in the event Additional Shares are issued together with other shares or securities or other assets of this corporation for consideration which covers both, be the proportion of such consideration so received in respect of the Additional Shares, 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 this corporation for Additional Shares deemed to have been issued pursuant to Section 5(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by this 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 this 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 (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.

(e) Adjustment for Stock Splits and Combinations. If this corporation at any time or from time to time effects a subdivision of the outstanding Common, the Conversion Price then in effect immediately before that subdivision shall be proportionately decreased, and conversely, if this corporation at any time or from time to time combines the outstanding shares of Common, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Common Dividends and Distributions. If at any time or from time to time after the Original Issue Date this corporation pays to holders of Common a dividend or other distribution in additional shares of Common without a corresponding dividend or other distribution to holders of Preferred, the Conversion Price that is then in effect shall be decreased as of the time of such issuance, as provided below:



(i) The Conversion Price shall be adjusted by multiplying the Conversion Price then in effect by a fraction equal to:

(A) the numerator of which is the total number of shares of Common issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common issuable in payment of such dividend or distribution;

(ii) If this corporation fixes a record date to determine which holders of Common are entitled to receive such dividend or other distribution, the Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

(g) Adjustments for Other Distributions. In the event this corporation shall declare a distribution to holders of Common payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 5 (e) and (f), then, in each such case for the purpose of this Section 5(g), the holders of the Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common of this corporation into which their shares of the Preferred are convertible as of the record date fixed for the determination of the holders of Common of this corporation entitled to receive such distribution.

(h) Adjustments for Reclassification, Exchange and Substitution. If the Common issuable upon the conversion of the Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or a stock dividend or a reorganization, merger, consolidation or sale of assets, as provided for elsewhere in this Section 5), then and in any such event each holder of Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the number of shares of Common into which such shares of Preferred might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 5, this corporation at its expense promptly shall compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common and the amount, if any, of other property which at the time would be received upon the conversion of Preferred.

(j) Notices of Record Date. In the event that this corporation shall propose at any time:

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

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

(iii) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up;

then, in connection with each such event, this corporation shall send to the holders of the Preferred:

(1) at least ten (10) days prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights and a description thereof (and specifying the date on which the holders of Common shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above; and

(2) in the case of the matters referred to in (ii) and (iii) above, at least ten (10) days prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common shall be entitled to exchange their Common for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of Preferred at the address for each such holder as shown on the books of this corporation.

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

## Section 6. Voting Rights.

(a) General Rights. Except as otherwise required by law, each share of Common issued and outstanding shall have one vote and each share of Preferred issued and outstanding shall have the number of votes equal to the number of Common shares into which the Preferred is convertible (rounded to the nearest whole share after aggregating all shares held by a shareholder), as adjusted from time to time pursuant to Section 5 hereof.

### (b) Election of Board of Directors.

(i) For so long as any shares of Series A-1 Preferred remain outstanding the holders of Series A-1 Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of this corporation's shareholders for the election of directors, and, subject to applicable provisions of the California Corporations Code, including Section 303, and this corporation's bylaws, to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors;

(ii) the holders of Common, voting as a separate class, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of this corporation's shareholders for the election of directors, and, subject to applicable provisions of the California Corporations Code, including Section 303, and this corporation's bylaws, to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; and

(iii) the holders of Common and Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of this corporation's shareholders for the election of directors, and to remove from office such directors and, subject to applicable provisions of the California Corporations Code, including Section 303, and this corporation's bylaws, to fill any vacancy caused by the resignation, death or removal of such directors.

**Section 7. Covenants.** In addition to any other rights provided by law, so long as any shares of Preferred shall be outstanding, this corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding shares of Preferred voting together as a single class:

(a) amend or repeal any provision of, or add any provision to, this corporation's Articles of Incorporation or Bylaws which changes the rights, preferences or privileges of the Preferred;

(b) increase or decrease the number of authorized shares of Preferred;

(c) reclassify the Preferred or create any new securities having rights, preferences or privileges senior to, or on parity with, the Series A-1 Preferred;

(d) pay a dividend on or repurchase any shares of Common or Preferred (excluding acquisitions of Common by the corporation pursuant to agreements which permit the corporation to repurchase such shares upon termination of services to the corporation);

(e) recapitalize, reorganize, merge (except transactions in which this corporation's shareholders own a majority of the securities of the surviving entity) or sell substantially any of this corporation's assets;

(f) issue any shares of Common or Preferred other than for those issuances described in Section 5(d)(i)(3) hereof;

(g) repurchase any Preferred, other than a repurchase pursuant to the redemption provisions of Section 4; or

(h) increase or decrease the size of the Board of Directors from five (5) directors.

In addition, this corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding shares of Series A-1 Preferred, voting together as a single class, amend or repeal any provision of, or add any provision to this corporation's Articles of Incorporation or Bylaws, which changes the rights, preferences or privileges of the Series A-1 Preferred.

**Section 8. Consent for Certain Repurchases of Common Stock Deemed to be Distributions.** Each holder of an outstanding share of Preferred shall be deemed to have consented, for purposes of Sections 502 and 503 of the General Corporation Law, to distributions made by this corporation in connection with the repurchase of shares of Common issued to or held by employees or consultants upon termination of their

employment or services pursuant to agreements providing for the right of said repurchase between this corporation and such persons.

**Section 9. Residual Rights.** All rights accruing to the outstanding shares of this corporation not expressly provided for to the contrary herein shall be vested in the Common.

IV.

The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

V.

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

VI.

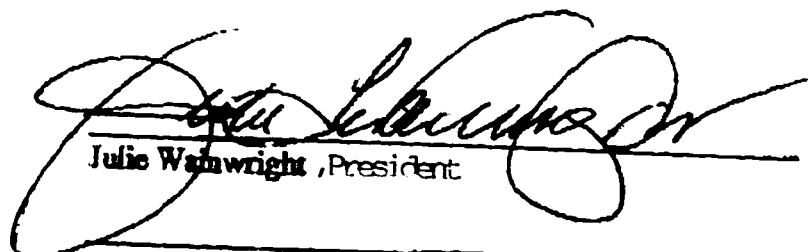
Any repeal or modification of the foregoing provisions of Articles IV and V by the shareholders of this corporation shall not adversely affect any right or protection of a director of this corporation existing at the time of such repeal or modification.


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

4. The foregoing 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 California Corporations Code. The total number of outstanding shares of this corporation is 6,001,489 shares of Common Stock, 3,733,337 shares of Series A Preferred and 39,538,391 shares of Series B Preferred. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%) of the outstanding shares of each of Common, Series A Preferred and Series B Preferred voting as separate classes, and more than fifty percent (50%) of the outstanding shares of Common, Series A Preferred and Series B Preferred voting together as a single class.

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

Executed at San Francisco, California on June 6, 2005.

  
Julie Wainwright, President

  
James F. Fulton, Secretary

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

Executed at Palo Alto, California on June 6, 2005.

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Julie Wainwright, President

  
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James F. Fulton, Secretary