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*6-29-00*

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TO THE ASSISTANT COMMISSIONER OF PATENTS AND TRADEMARKS, ATTACHED ORIGINAL DOCUMENTS OR COPY THEREOF.

1. Name of conveying party(ies):

Resource Consulting Group, Inc.

- Individual
- Association
- General Partnership
- Limited Partnership
- Corporation - State CALIFORNIA
- Other:

Additional name(s) of conveying party(ies) attached?  
 Yes  No



06-29-2000

U.S. Patent & TMO's/TM Mail Rcpt Dt. #57

2. Name and address of receiving party(ies):

**Name:** Alitum, Inc.  
**Internal Address:** Suite C-250  
**Street Address:** 6540 Lusk Boulevard  
**City:** San Diego **State:** California **ZIP:** 92121

- Individual
- Association
- General Partnership
- Limited Partnership
- Corporation - State CALIFORNIA
- Other:

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No

(Designations must be a separate document from Assignment)  
Additional name(s) and address(es) attached?  
 Yes  No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other:

Execution Date: **March 8, 2000**

4. Application number(s) or registration number(s):

- a. Trademark Application No(s):  
75/919090; 75/927786; 75/927784
- b. Trademark Registration No(s):

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

**Name:** Eric M. Nelson  
 KNOBBE, MARTENS, OLSON & BEAR, LLP  
 Customer No. 20,995  
**Internal Address:** Sixteenth Floor  
**Street Address:** 620 Newport Center Drive  
**City:** Newport Beach **State:** CA **ZIP:** 92660  
**Attorney's Docket Nos.:** ALITUM.005T/.006T/.007T

7. Total fee (37 CFR 3.41): \$90

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 11-1410

Please charge this account for any additional fees which may be required, or credit any overpayment to this account.

6. Total number of applications and registrations involved: 3

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct, and any attached copy is a true copy of the original document.

Eric M. Nelson  
Name of Person Signing

Signature

6/26/2000  
Date

Total number of pages including cover sheet, attachments and document: 18

Mail documents to be recorded with required cover sheet information to:

07/31/2000 NTWAI1 00000022 75919090

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Washington, D.C. 20231

# State of California



## SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 16 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

APR 21 2000

Secretary of State



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FILED *NEP*  
In the office of the Secretary of State  
of the State of California  
MAR 08 2000

*Bill Jones*  
BILL JONES, Secretary of State

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AMENDED AND RESTATED ARTICLES  
OF  
INCORPORATION OF RESOURCE CONSULTING GROUP, INC.

Michael R. Harris and John A. Rosicky hereby certify that:

**ONE:** The original name of this corporation is Resource Consulting Group, Inc. and the date of filing of the original Articles of Incorporation with the Secretary of State of the State of California was April 1, 1986, as amended on February 23, 1988 and February 24, 1998 (the "*Articles of Incorporation*");

**TWO:** They are the duly elected and acting President and Secretary, respectively, of Alitum, Inc., a California corporation.

**THREE:** The Articles of Incorporation of this corporation are hereby amended and restated to read as follows:

I

The name of the Corporation is ALITUM, INC. (the "*Corporation*" or the "*Company*").

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.

III

**A.** This Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares which the Corporation is authorized to issue is Twenty-Seven Million One Hundred Eighty Six Thousand Seven Hundred Ten (27,186,710) shares, Twenty Million (20,000,000) shares of which shall be Common Stock (the "*Common Stock*") and Seven Million One Hundred Eighty-Six Thousand Seven Hundred Ten (7,186,710) shares of which shall be Preferred Stock (the "*Preferred Stock*"). The Preferred Stock shall have a par value of one one-hundredth of one cent (\$0.0001) per share and the Common Stock shall have a par value of one one-hundredth of one cent (\$0.0001) per share.

**B.** The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, within the limitations and restrictions stated in these Articles of Incorporation, to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series prior or subsequent to the issue of shares of that

series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. All of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Preferred").

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

**1. Dividend Rights.**

a. The Holders of Series A Preferred, in preference to the holders of any other stock of the Company ("Junior Stock"), shall be entitled to receive, when, as and if declared by the Board of Directors, but only out of funds that are legally available therefor, non-cumulative cash dividends at the rate of eight percent (8%) of the Original Issue Price (as defined below) per annum on each outstanding share of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The "Original Issue Price" of each share of the Series A Preferred shall be eighty cents (\$0.80).

b. So long as any shares of Series A Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) above) on the Series A Preferred shall have been paid or declared and set apart. The provisions of this Section 1(b) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock or (iii) any repurchase of any outstanding securities of the Company that is unanimously approved by all of the members of the Company's Board of Directors. The holders of the Series A Preferred expressly waive their rights, if any, as described in Sections 502, 503 and 506 of the General Corporation Law of California as they relate to repurchase of shares upon termination of employment or service as a consultant or director.

**2. Voting Rights.**

a. **General Rights.** Except as otherwise provided herein or as required by law, the Series A Preferred shall be voted equally with the shares of the Common Stock of the Company and not as a separate class, at any annual or special meeting of shareholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series A Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series A

Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

b. **Separate Vote of Series A Preferred.** For so long as at least Seven Hundred Eighteen Thousand Six Hundred Seventy One (718,671) shares of Series A Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series A Preferred) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series A Preferred shall be necessary for effecting or validating the following actions (and the Company shall not effect or implement any such action until the requisite vote or consent has been obtained):

(i) Any increase or decrease in the authorized capital stock of the Company; or the creation or issuance of any security of the Company with voting rights, antidilution provisions or other rights, preferences or privileges which are senior to or pari passu with those of the Series A Preferred, or the redesignation of any security such that it becomes such a security;

(ii) Any redemption or repurchase of the Company's equity securities, other than repurchases of stock from past employees at no more than the applicable original issuance cost, or any action that results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock.;

(iii) Any agreement by the Company or its shareholders regarding an Asset Transfer or an Acquisition (each as defined in Section 3(c)), or any sale, lease, license or other disposition of all or substantially all of the Company's technology assets;

(iv) Any increase or decrease in the authorized number of members of the Company's Board of Directors;

(v) Any adoption of, or any increase in the number of shares currently reserved for issuance under, any stock option plan, stock purchase plan or other equity-based compensation plan of the Company;

(vi) Any amendment, alteration or repeal of any provision of the Articles of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Determination);

(vii) Any increase or decrease in the authorized number of shares of Series A Preferred or any modification of the rights, preferences, privileges and limitations of the Series A Preferred (whether by amendment, merger or otherwise);

(viii) Any liquidation, dissolution or winding up of the Company; and

(ix) Any other reorganization of or involving the Company or its securities or any recapitalization or reclassification of the securities of the Company (excluding any reincorporation in the State of Delaware).

c. **Election of Board of Directors.** For so long as at least at least Seven Hundred Eighteen Thousand Six Hundred Seventy One (718,671) shares of Series A Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series A Preferred) (i) the holders of Series A Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors and (ii) the holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

### **3. Liquidation Rights.**

a. Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Junior Stock, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series A Preferred equal to the Original Issue Price plus all declared and unpaid dividends on such shares of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A Preferred held by them. If, upon any such liquidation, dissolution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 3(a), then such assets shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

b. After the payment of the full liquidation preference of the Series A Preferred as set forth in Section 3(a) above, the assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Series A Preferred on an as-if-converted to Common Stock basis until such time as the holders of Series A Preferred have received pursuant to Section 3(a) above and this Section 3(b) an aggregate amount per share of Series A Preferred equal to three (3) times the sum of the Original Issue Price plus all declared and unpaid dividends on such shares of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series A Preferred). Thereafter, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock.

c. The following events shall be considered a liquidation under this Section 3:

(i) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Company immediately prior to such consolidation, merger or reorganization own less than 50% of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to

which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Company (an "Acquisition"); and

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

In any of such events, if the consideration received by the Company is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

(a) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) trading day period ending three (3) trading days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) trading day period ending three (3) trading days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A)(1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

The "Original Issue Price" of each share of the Series A Preferred shall be eighty cents (\$0.80).

#### 4. Conversion Rights.

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

a. **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Series A Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "*Series A Preferred Conversion Rate*" then in effect (determined as provided in Section 4(b)) by the number of shares of Series A Preferred being converted.

b. **Series A Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A Preferred (the "**Series A Preferred Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series A Preferred by the "Series A Preferred Conversion Price," calculated as provided in Section 4(c).

c. **Conversion Price.** The conversion price for the Series A Preferred shall initially be the Original Issue Price of the Series A Preferred (the "**Series A Preferred Conversion Price**"). Such initial Series A Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series A Preferred Conversion Price herein shall mean the Series A Preferred Conversion Price as so adjusted.

d. **Mechanics of Conversion.** Each holder of Series A Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series A Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series A Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series A Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series A Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series A Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

e. **Adjustment for Stock Splits and Combinations.** If the Company shall at any time or from time to time after the date that the first share of Series A Preferred is issued (the "**Original Issue Date**") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Series A Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Series A Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

f. **Adjustment for Common Stock Dividends and Distributions.** If the Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series A



Preferred Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Preferred Conversion Price then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however*, that 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 Series A Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Preferred Conversion Price shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

**g. Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series A 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 an Acquisition or Asset Transfer as defined in Section 3(c) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series A 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 recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series A Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series A Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**h. Reorganizations, Mergers or Consolidations.** If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon conversion of the Series A Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series A Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series A Preferred Conversion Price then in effect

and the number of shares issuable upon conversion of the Series A Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**i. Sale of Shares Below Series A Preferred Conversion Price.**

(i) If at any time or from time to time after the Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this subsection (i) to have issued or sold, Additional Shares of Common Stock (as defined in subsection (i)(iv) below), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as defined in subsection (i)(iv) below) less than the then effective Series A Preferred Conversion Price, then and in each such case the then existing Series A Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Preferred Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection i(ii)) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series A Preferred Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred could be converted if fully converted on the day immediately preceding the given date and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date (excepting those shares where the cost of exercise or conversion is in excess of the Series A Preferred Conversion Price).

(ii) For the purpose of making any adjustment required under this Section 4(i), the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection (i)(iii) below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4(i), if the Company issues or sells any (i) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (ii) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; *provided* that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; *provided* further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided* further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series A Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series A Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities; *provided* that such readjustment shall not apply to prior conversions of Series A Preferred.

(iv) **“Additional Shares of Common Stock”** shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i), other than (A) shares of Common Stock issued upon conversion of the Series A Preferred; (B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock underlying such options, warrants or other rights, issued after the Original Issue Date to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary pursuant to stock purchase or stock option plans or other equity-based compensation arrangements that are approved after the Original Issue Date by the Board (including approval by the two representatives of the Series A Preferred); (C) shares of Common Stock issuable pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date; (D) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock underlying such options, warrants or other rights, issued after the Original Issue Date and for consideration other than cash pursuant to a merger, consolidation, acquisition, joint venture, joint marketing or promotion arrangement, strategic transaction or similar business transaction approved after the Original Issue Date by the Board (including approval by the two representatives of the Series A Preferred) and (E) shares of Common Stock or other securities convertible into Common Stock issued after the Original Issue Date pursuant to any equipment leasing arrangement or debt financing from a bank or similar financial institution approved by the Board after the Original Issue Date (including approval by the two representatives of the Series A Preferred). References to Common Stock in the subsections of this clause (iv) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i). The **“Effective Price”** of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 4(i), into the aggregate consideration received, or deemed to have been received by the Company for such issue under this Section 4(i), for such Additional Shares of Common Stock.

j. **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series A Preferred, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series A Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series A Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred.

k. **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or any right to subscribe for, purchase or otherwise acquire any securities or other assets, or (ii) any Acquisition (as defined in Section 3(c)) or other capital reorganization of the Company, any reclassification or

recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section (3c)), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series A Preferred at least twenty (20) days prior to the record date specified therein (or such shorter period approved by holders of a majority of the outstanding shares of Series A Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, recapitalization, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, recapitalization, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

**I. Automatic Conversion.**

(i) Each share of Series A Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Preferred Conversion Price, (A) at any time upon the affirmative election of the holders of at least a majority of the outstanding shares of the Series A Preferred, (B) at any time upon which eighty percent (80%) of the total number of shares of Series A Preferred ever originally issued by the Company have been converted into Common Stock or (C) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least \$2.40 (as adjusted for stock splits, dividends, recapitalizations and the like), and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$12,000,000. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) Upon the occurrence of any of the events specified in Section 4(1)(i) above, the outstanding shares of Series A Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series A Preferred, the holders of Series A Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series A Preferred. 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 Series A Preferred surrendered were convertible on the date on which such automatic conversion

occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

**m. Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

**n. Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred. This calculation shall be calculated based upon the fully-diluted capitalization of the Company. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

**o. Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

**p. Payment of Taxes.** The Company 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 Stock upon conversion of shares of Series A Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred so converted were registered.

**q. No Dilution or Impairment.** Without the consent of the holders of the then outstanding Series A Preferred, as required under Section 2(b), the Company shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith

assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred against dilution or other impairment.

**5. Redemption.**

a. The Company shall be obligated to redeem the Series A Preferred as follows:

(i) Each holder of outstanding shares of Series A Preferred may require the Company, to the extent it may lawfully do so, to redeem any portion of the Series A Preferred held by such holder in three (3) annual installments beginning on the fifth anniversary of the Original Issue Date, and ending on the date two (2) years from such first redemption date (each a "**Redemption Date**"); provided that the Company shall receive at least sixty (60) days prior to such fifth anniversary written notice of such request of the holder of Series A Preferred. The Company shall effect such redemptions on the applicable Redemption Date by paying in cash in exchange for the shares of Series A Preferred to be redeemed a sum equal to the Original Issue Price per share of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) plus a twelve percent (12%) annual dividend, calculated from the Original Issue Date with respect to such shares (whether or not previously declared by the Board). The total amount to be paid for the Series A Preferred is hereinafter referred to as the "**Redemption Price**." The number of shares of Series A Preferred that the Company shall be required to redeem on any one Redemption Date with respect to a holder of Series A Preferred shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series A Preferred requested by such holder to be redeemed by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 5(a) shall be redeemed from each holder of Series A Preferred on a *pro rata* basis calculated based upon the number of shares of Series A Preferred that each such holder requested be redeemed pursuant to the written notice to the Company referenced in this subsection).

(ii) At least sixty (60) days but no more than one hundred and fifty (150) days prior to the first Redemption Date, the Company shall send a notice (a "**Redemption Notice**") to all holders of Series A Preferred setting forth (A) the Redemption Price; (B) a summary of the procedures to obtain redemption of the Series A Preferred and the financial condition of the Company as it relates to the Company's ability to effect such a redemption; and (C) the place at which holders of Series A Preferred may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Redemption Date, then it shall redeem such shares *pro rata* calculated based upon the number of shares of Series A Preferred that each holder requested be redeemed pursuant to the written notice to the Company referenced in this subsection, and it shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

b. On or prior to each Redemption Date, the Company shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable

instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section 5(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 4 hereof no later than the fifth (5th) day preceding the Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section 5(b) remaining unclaimed at the expiration of one (1) year following such Redemption Date shall be returned to the Company promptly upon its written request.

c. On or after each Redemption Date, each holder of shares of Series A Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Company 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 canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holders of such shares as holders of Series A Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Series A Preferred are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series A Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

d. In the event of a request for redemption of any shares of Series A Preferred, the Conversion Rights (as defined in Section 4) for such shares of Series A Preferred to be redeemed as of any Redemption Date shall terminate as to the shares designated for redemption on such Redemption Date at the close of business on the fifth (5th) day preceding such Redemption Date, unless default is made in payment of the Redemption Price.

#### 6. No Reissuance of Series A Preferred.

No share or shares of Series A Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued; and in addition, the Articles of Incorporation shall be appropriately amended to effect the corresponding reduction in the Company's authorized stock.

### IV

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

B. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the General Corporation Law of California) for breach of duty to the Corporation and its shareholders through bylaw provisions or through agreements with agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the General Corporation



Law of California, subject to the limits on such excess indemnification set forth in Section 204 of the General Corporation Law of California. If, after the effective date of this Article, California law is amended in a manner which permits a corporation to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

C. Any repeal or modification of this Article shall only be prospective and shall not affect the rights under this Article in effect at the time of any alleged occurrence of any action or omission to act giving rise to liability.

**THREE:** The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the Board of Directors of this Corporation.

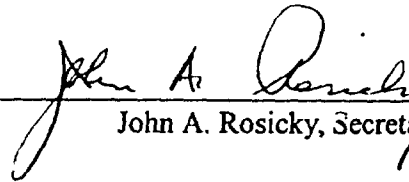
**FOUR:** The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the a General Corporation Law of California. The Corporation has one class of stock outstanding and such class of stock is entitled to vote with respect to the amendments herein set forth. The total number of outstanding shares of Common Stock of the Corporation is three million seven hundred fifteen thousand sixty one (3,715,061). 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 Common Stock voting as a class.

The undersigned, **MICHAEL R. HARRIS** and **JOHN A. ROSICKY**, the President and Secretary, respectively, of Resource Consulting Group, Inc., declare under penalty of perjury under the laws of the State of California that the matters set out in the foregoing Certificate are true and correct of their own knowledge.

Executed at San Diego, California on March 8, 2000.



Michael R. Harris, President



John A. Rosicky, Secretary



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RECORDED: 06/29/2000

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