

2343025

Office of the Secretary of
of the State of California

JAN 20 2005

WIN SHELLEY, Secretary of State

**Certificate of Amendment and Restatement
of Articles of Incorporation of Arrive Technologies, Inc.**

Eric A. Brill certifies that:

A. He is the Vice President and the Assistant Secretary of Arrive Technologies, Inc., a California corporation.

B. The Articles of Incorporation of this corporation (the "Company") are amended and restated to read in full as set forth in the attachment hereto entitled "Restated Articles of Incorporation of Arrive Technologies, Inc.," dated January 19, 2005.

C. This amendment and restatement of Articles of Incorporation has been duly approved in a resolution duly adopted by the Company's board of directors on November 10, 2004.

D. This amendment and restatement of Articles of Incorporation has been duly approved by the written consent of the Company's shareholders in accordance with Section 902 of the California Corporations Code, on November 10, 2004. The total number of outstanding shares of capital stock of the Company is 9,350,225, which total includes (1) 6,554,725 shares of Common Stock and (2) 2,795,500 shares of Series A Preferred Stock that are presently convertible into 2,795,500 shares of Common Stock. The number of shares of such classes voting in favor of the amendment exceeded the vote required. The percentage vote required was more than fifty percent (50%) of the aggregate number of outstanding shares of (1) Common Stock; and (2) Series A Preferred Stock, counted for this purpose on an as-converted basis. No shares of any other class of capital stock of the Company are outstanding.

E. The undersigned declares 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 January 19, 2005.

Eric A. Brill

Eric A. Brill, Vice President
and Assistant Secretary

**Restated Articles of Incorporation
of**

Arrive Technologies, Inc.

(January 19, 2005)

Article 1. The name of this corporation is Arrive Technologies, Inc. (the "Company").

Article 2. The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

Article 3. For purposes of these Articles, "Board of Directors" shall mean the Board of Directors of the Company.

Article 4.

(a) The Company is authorized to issue two classes of stock, designated respectively "Common Stock" and "Preferred Stock." All shares of stock shall have a par value of \$.001 per share.

(b) The total number of shares of Common Stock which the Company is authorized to issue is Fifty Million (50,000,000).

(c) The total number of shares of Preferred Stock which the Company is authorized to issue is Twenty Million (20,000,000). The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is authorized to fix the number of shares of any series of Preferred Stock and to determine the designation of any such series. The Board of Directors is also authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding), the number of shares of any such series subsequent to the issue of shares of that series.

Article 5.

5.1. Designation

Six Million (6,000,000) shares of Preferred Stock shall be designated and known as the "Series A Preferred Stock". Four Million (4,000,000) shares of Preferred Stock shall be designated and known as the "Series B Preferred Stock". The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred Stock are as follows:

5.2. Dividends

(a) Holders of (A) Series A Preferred Stock and (B) Series B Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of the assets of the Company which are legally available therefor. No dividend shall be declared or paid with respect to the Common Stock or any other series of Preferred Stock ranking junior to the Series A Preferred Stock and Series B Preferred Stock unless a dividend shall at the same time be declared and paid with respect to the Series A Preferred Stock and Series B Preferred Stock, respectively, on a *pari passu* basis, in an amount equal to the dividend that would be payable with respect to a share of Series A Preferred Stock and Series B Preferred Stock if each were to be converted to Common Stock immediately before such dividend was declared or paid. If any dividend shall be declared or paid with respect to any other class or series of the Preferred Stock other than the Series A Preferred Stock and Series B Preferred Stock, a dividend shall at the same time be declared and paid with respect to the Series A Preferred Stock and Series B Preferred Stock pro rata in an amount proportionate to the respective original issuance prices of each such other class or series.

(b) Dividends shall not accrue or accumulate on any share of Preferred Stock, except to the extent they are declared but unpaid. Accumulation of declared but unpaid dividends shall bear no interest.

5.3. Redemption

The Company will have no right to redeem any shares of the Series A Preferred Stock or the Series B Preferred Stock.

5.4. Preference on Liquidation

5.4(a) Series A Preference and Series B Preference. In the event of any liquidation, dissolution, involuntary or voluntary corporate reorganization under the federal bankruptcy laws or similar state laws, or winding up of the Company, the holders of shares of the Series A Preferred Stock and Series B Preferred Stock then outstanding shall be entitled, *pari passu* as between such series of Preferred Stock, to be paid out of the assets and surplus funds of the Company available for distribution to its shareholders, and before any payment shall be made to the holders of any shares of Common Stock, an amount per share equal to the Original Issue Price (as defined in Section 5.5(b)) of such series of Preferred Stock, plus declared and unpaid dividends thereon to the date fixed for distribution. If upon any such liquidation, dissolution, bankruptcy or winding up of the Company the assets and surplus funds of the Company available for distribution to its shareholders shall be insufficient to pay the holders of the Series A Preferred Stock and Series B Preferred Stock the full amounts to which they are entitled, the holders of the Series A Preferred Stock and Series B Preferred Stock shall share ratably in the distribution of such assets and surplus funds in proportion to the full preferential amounts to which each such holder is otherwise entitled.

5.4(b) In the event payments provided for in subparagraph (a) above shall have been made, the holders of Common Stock shall be entitled to be paid out of the assets and surplus funds of the Company available for distribution to its shareholders One Dollar (\$1.00) per share plus declared and unpaid dividends thereon to the date fixed for the distribution. If, after payment shall have been made pursuant to subparagraph (a) above, the assets and surplus funds of the Company available for distribution to its shareholders shall be insufficient to pay the holders of Common Stock the full amounts to which they are each entitled, the holders of the Common Stock shall share ratably in the distribution of such assets and surplus funds in proportion to the full preferential amounts to which each such holder is otherwise entitled to receive.

5.4(c) In the event payments provided for in subparagraphs (a) and (b) above shall have been made, the holders of Series A Preferred Stock, the Series B Preferred Stock and Common Stock shall be entitled to share pro rata on a per share basis (treating each share of Series A Preferred Stock and Series B Preferred Stock as if converted into Common

Stock) in all remaining assets and surplus funds of the Company available for distribution to its shareholders.

5.4(d) For the purposes of this Section 5.4, the merger or consolidation of the Company into or with another corporation or other entity or any other corporate reorganization in which the Company shall not be the continuing or surviving entity of such consolidation, merger or reorganization, the sale of all or substantially all the assets of the Company, or a transaction or series of related transactions by the Company in which in excess of fifty percent (50%) of the Company's voting power is transferred, shall be deemed to be a liquidation, dissolution or winding up of the Company – unless, in each case, such transaction or series of related transactions has been approved by the holders of a majority of the shares of Series A Preferred Stock and Series B Preferred Stock then outstanding, voting together as a single class on an as-converted basis. If such approval has been given, such transaction or series of related transactions shall not be deemed to be a liquidation, dissolution or winding up of the Company, in which event the Series A Preferred Stock and Series B Preferred Stock shall have rights, preferences, privileges and restrictions as provided in Article 5.5(f)(v).

5.4(e) The Company shall have the right, without the approval of the holders of the Series A Preferred Stock or the Series B Preferred Stock, to authorize and issue shares of another series of Preferred Stock having liquidation preferences on a parity with those applicable to the Series A Preferred Stock and Series B Preferred Stock. No series of Preferred Stock may be granted liquidation preferences superior to those applicable to the Series A Preferred Stock without the prior approval of the holders of a majority of the shares of Series A Preferred Stock then outstanding. No series of Preferred Stock may be granted liquidation preferences superior to those applicable to the Series B Preferred Stock without the prior approval of the holders of a majority of the shares of Series B Preferred Stock then outstanding.

5.5. Conversion

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

5.5(a) **Right to Convert.** Each share of Series A Preferred Stock and Series B Preferred Stock shall be convertible, at the option of the holder thereof, without payment of additional consideration, at any time after the date of issuance of such share, at the

office of the Company or any transfer agent for such stock, into fully-paid and nonassessable shares of Common Stock.

5.5(b) Conversion Price. The Series A Preferred Stock and Series B Preferred Stock shall be convertible into the number of shares of Common Stock which result from dividing the Conversion Price, as hereinafter defined, in effect at the time of conversion into the applicable Original Issue Price, as hereinafter defined. The "Original Issue Price" shall mean: (i) One Dollar (\$1.00) with respect to the Series A Preferred Stock; and (ii) One Dollar and Twenty-Five Cents (\$1.25) with respect to the Series B Preferred Stock. The price at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred Stock and Series B Preferred Stock (the "Conversion Price") shall initially be the applicable Original Issue Price, for such series of Preferred Stock, per share of Common Stock. Such initial Conversion Price shall be subject to adjustment as hereinafter provided.

5.5(c) Automatic Conversion. Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price, in the event of (i) the closing of a firm commitment underwritten public offering of Company Common Stock at a per share price of at least five dollars (\$5.00) and yield gross proceeds to the Company in excess of Five Million Dollars (\$5,000,000), pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock (whether for the account of the Company or for the account of one or more shareholders of the Company) to the public, provided that the underwriter or underwriters in such public offering shall have required, as a condition to such underwriting, that all shares of the Company's Preferred Stock outstanding at such time be converted to Common Stock; or (ii) a merger, consolidation or similar business combination involving the Company or a sale of all or substantially all of its assets.

In the event of such offering, the person(s) entitled to receive the Common Stock issuable upon conversion of the Series A Preferred Stock and Series B Preferred Stock shall not be deemed to have converted such stock until immediately prior to the closing of such sale of securities (the "Offering Conversion Date"). Upon the occurrence of such an offering, the outstanding shares of Series A Preferred Stock and Series B Preferred Stock shall be converted automatically without further action by the holders of said shares and whether or not the

certificates representing said shares are surrendered to the Company or its transfer agent; provided, however, the Company shall not be obligated to issue certificates evidencing the shares of Series A Preferred Stock and Series B Preferred Stock unless certificates evidencing such shares are either delivered to the Company or any transfer agent as hereinafter provided, or the holder notifies the Company that said certificate or certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company, indemnifying the Company against any loss incurred by it in connection therewith. Upon the occurrence of the automatic conversion of the Series A Preferred Stock and Series B Preferred Stock, the holders of the Series A Preferred Stock and Series B Preferred Stock shall surrender the certificate or certificates representing their shares at the office of the Company or transfer agent for such stock. The Company shall, as soon as practicable thereafter, issue and deliver to such holder, at such office and in his 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 the Series A Preferred Stock and Series B Preferred Stock, as the case may be, were convertible on the Offering Conversion Date.

5.5(d) Mechanics of Conversion. Before any holder of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to convert the same into full shares of Common Stock, he shall surrender the certificate or certificates therefore, duly endorsed, at the office of the Company or of any transfer agent for such stock, and shall give written notice to the Company at such office that he elects to convert the same. The Company shall, as soon as practicable thereafter, issue and deliver to such holder, at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which such converted shares of stock were convertible on the Conversion Date, as hereinafter defined. 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 the Series A Preferred Stock and Series B Preferred Stock (the "Conversion Date"). The person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of the Conversion Date.

5.5(e) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of shares of Series A Preferred Stock or Series B Preferred Stock. If more than one share of Series A Preferred Stock or Series B Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Preferred Stock or Series B Preferred Stock so surrendered, respectively. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Series A Preferred Stock or Series B Preferred Stock, the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to that fractional interest of the then Current Market Price.

5.5(f) Conversion Price Adjustments. The Conversion Price shall be subject to adjustment from time to time as follows:

(i) **Common Stock Issued at Less Than the Conversion Price.** If the Company shall issue any Common Stock other than Excluded Stock (as hereinafter defined) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance, the Conversion Price in effect immediately prior to each such issuance shall immediately (except as provided below) be reduced to the price determined by dividing (1) an amount equal to the sum of (A) the number of shares of Common Stock outstanding immediately prior to such issuance multiplied by the Conversion Price in effect immediately prior to such issuance and (B) the consideration, if any, received by the Company upon such issuance, by (2) the total number of shares of Common Stock outstanding immediately after such issuance.

For the purposes of any adjustment of the Conversion Price pursuant to clause (i), the following provisions shall be applicable:

(A) **Cash.** In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Company shall be deemed to be the amount of the cash proceeds received by the Company for such Common Stock before deducting therefrom any discounts, commissions, taxes or other expenses allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof.

(B) Consideration Other Than Cash. In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of capital stock or other securities of the Company) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors, irrespective of any accounting treatment; provided that such fair value as determined by the Board of Directors shall not exceed the aggregate Current Market Price of the shares of Common Stock being issued as of the date the Board of Directors authorizes the issuance of such shares.

(C) Options and Convertible Securities. In the case of the issuance of (i) options, warrants or other rights to purchase or acquire Common Stock (whether or not at the time exercisable), (ii) securities by their terms convertible into or exchangeable for Common Stock (whether or not at the time so convertible or exchangeable) or options, warrants or rights to purchase such convertible or exchangeable securities (whether or not at the time exercisable):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options, warrants or other rights to purchase or acquire Common Stock shall be deemed to have been issued at the time such options, warrants or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subclauses (A) and (B) above), if any, received by the Company upon the issuance of such options, warrants or rights plus the minimum purchase price provided in such options, warrants or rights for the Common Stock covered thereby;

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options, warrants or other rights to purchase or acquire such convertible or exchangeable securities and the subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or such options, warrants or rights were issued and for a consideration equal to the consideration, if any, received by the Company for any such securities and related options, warrants or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the

additional consideration (determined in the manner provided in subclauses (A) and (B) above), if any, to be received by the Company upon the conversion or exchange of such securities, or upon the exercise of any related options, warrants or rights to purchase or acquire such convertible or exchangeable securities and the subsequent conversion or exchange thereof;

(3) On any change in the number of shares of Common Stock deliverable upon exercise of any such options, warrants or rights or conversion or exchange of such convertible or exchangeable securities or any change in the consideration to be received by the Company upon such exercise, conversion or exchange, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price as then in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had an adjustment been made upon the issuance of such options, warrants or rights not exercised prior to such change, or of such convertible or exchangeable securities not converted or exchanged prior to such change, upon the basis of such change;

(4) On the expiration or cancellation of any such options, warrants or rights, or the termination of the right to convert or exchange such convertible or exchangeable securities, if the Conversion Price shall have been adjusted upon the issuance thereof, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained had an adjustment been made upon the issuance of such options, warrants, rights or such convertible or exchangeable securities on the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options, warrants or rights, or upon the conversion or exchange of such convertible or exchangeable securities; and

(5) If the Conversion Price shall have been adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common Stock upon the exercise, conversion or exchange thereof; (provided, however, that no increase in the Conversion Price shall be made pursuant to subclauses (1) and (2) of this subclause (C)).

(ii) **Excluded Stock.** "Excluded Stock" shall mean (A) shares of Common Stock issued or reserved for issuance by the Company as a stock dividend payable in

shares of Common Stock, or upon any subdivision or split-up of the outstanding shares of Common Stock, Series A Preferred Stock or Series B Preferred Stock, or upon conversion of shares of Series A Preferred Stock or Series B Preferred Stock; (B) shares of capital stock issued for compensation purposes to employees, consultants, officers or directors of the Company, whether directly or pursuant to stock options or restricted stock plans approved by the Board of Directors, together with any such shares that are repurchased by the Company and reissued to any such employee, consultant, officer or director; (C) Company securities issued in connection with an acquisition, merger, consolidation, reorganization or similar transaction to which either (i) the Company is a party, or (ii) a majority of the Company's then-outstanding capital stock or assets is subject; (D) Company securities issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors; (E) Company securities issued pursuant to options, warrants or other rights to acquire securities of the Company that are outstanding as of the date of the filing of this amendment; (F) Company securities issued after the date of filing of this amendment pursuant to warrants which (x) are outstanding on such filing date, or (y) may become issuable after such filing date pursuant to contractual obligations of the Company in effect on such filing date; and (G) Company securities issued to a corporation or other entity designated by the Board of Directors as a "strategic partner" by the Company, provided that such designation has been approved by any person whose approval is required, under any agreement to which the Company is a party as of the date of the filing of this amendment, as a condition to the classification of such securities as Excluded Securities. All shares of Excluded Stock which the Company has reserved for issuance shall be deemed to be outstanding for all purposes of computations under subparagraph 5.5(f)(i).

(iii) Stock Dividends, Subdivisions, Reclassifications or Combinations. If the Company shall (i) declare a dividend or make a distribution on its Common Stock in shares of its Common Stock, (ii) subdivide or reclassify the outstanding shares of Common Stock into a greater number of shares, or (iii) combine or reclassify the outstanding Common Stock into a smaller number of shares, the Conversion Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the holder of any shares of Series A Preferred Stock or Series B Preferred Stock surrendered for conversion after such

date shall be entitled to receive the number of shares of Common Stock which he would have owned or been entitled to receive had such Series A Preferred Stock or Series B Preferred Stock been converted immediately prior to such date. Successive adjustments in the Conversion Price shall be made whenever any event specified above shall occur.

(iv) Other Distributions. In case the Company shall fix a record date for the making of a distribution to all holders of shares of its Common Stock (i) of shares of any class other than its Common Stock or (ii) of evidence of indebtedness of the Company or any Subsidiary or (iii) of assets (excluding cash dividends or distributions, and dividends of distributions referred to in subparagraph 5.5(f)(iii) above, or (iv) of rights or warrants (excluding those referred to in subparagraph 5.5(f)(i) above), in each such case the Conversion Price in effect immediately prior thereto shall be reduced immediately thereafter to the price determined by dividing (1) an amount equal to the difference resulting from (A) the number of shares of Common Stock outstanding on such record date multiplied by the Conversion Price per share on such record date, less (B) the fair market value (as determined by the Board of Directors, whose determination shall be conclusive) of said shares or evidences of indebtedness or assets or rights or warrants to be so distributed, by (2) the number of shares of Common Stock outstanding on such record date. Such adjustment shall be made successively whenever such a record date is fixed. In the event that such distribution is not so made, the Conversion Price then in effect shall be readjusted, effective as of the date when the Board of Directors determines not to distribute such shares, evidence of indebtedness, assets, rights or warrants, as the case may be, to the Conversion Price which would then be in effect if such record date had not been fixed.

(v) Consolidation, Merger, Sale, Lease or Conveyance. Except as provided in Article 5.4(d), in case of any consolidation with or merger of the Company with or into another corporation, or in case of any sale, lease or conveyance to another corporation of the assets of the Company as an entirety or substantially as an entirety, each share of Series A Preferred Stock and Series B Preferred Stock shall after the date of such consolidation, merger, sale, lease or conveyance be convertible into the number of shares of stock or other securities or property (including cash) to which the Common Stock issuable (at the time of such consolidation, merger, sale, lease or conveyance) upon conversion of such share of

Series A Preferred Stock and Series B Preferred Stock would have been entitled upon such consolidation, merger, sale, lease or conveyance; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the holders of the shares of Series A Preferred Stock and Series B Preferred Stock shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to any shares of stock or other securities or property thereafter deliverable on the conversion of the shares of Series A Preferred Stock and Series B Preferred Stock.

(vi) Rounding of Calculations; Minimum Adjustment. All calculations under this subparagraph (f) shall be made to the nearest cent or to the nearest one hundredth (1/100th) of a share, as the case may be. Any provision of this section 5.5 to the contrary notwithstanding, no adjustment in the Conversion Price shall be made if the amount of such adjustment would be less than \$0.005, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.005 or more.

(vii) Timing of Issuance of Additional Common Stock Upon Certain Adjustments. In any case in which the provisions of this subparagraph (f) shall require that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (A) issuing to the holder of any share of Series A Preferred Stock or Series B Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such conversion before giving effect to such adjustment and (B) paying to such holder any amount of cash in lieu of a fractional share of Common Stock pursuant to subparagraph (e) of this section 5.5; provided that the Company upon request shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment.

5.5(g) Current Market Price. The Current Market Price at any date shall mean, in the event the Common Stock is publicly traded, the average of the daily closing prices

per share of Common Stock for thirty (30) consecutive trading days ending no more than fifteen (15) business days before such date (as adjusted for any stock dividend, split, combination or reclassification that took effect during such thirty (30) business day period). The closing price for each day shall be the last reported sale price regular way or, in case no such reported sale takes place on such day, the average of the last closing bid and asked prices regular way, in either case on the principal national securities exchange on which the Common Stock is listed or admitted to trading, or if not listed or admitted to trading on any national securities exchange, the closing sale price for such day reported by NASDAQ, if the Common Stock is traded over-the-counter and quoted in the National Market System, or if the Common Stock is so traded, but not so quoted, the average of the closing reported bid and asked prices of the Common Stock as reported by NASDAQ or any comparable system or, if the Common Stock is not listed on NASDAQ or any comparable system, the average of the closing bid and asked prices as furnished by two members of the National Association of Securities Dealers, Inc. selected from time to time by the Company for that purpose. If the Common Stock is not traded in such manner that the quotations referred to above are available for the period required hereunder, Current Market Price per share of Common Stock shall be deemed to be the fair value as determined by the Board of Directors, irrespective of any accounting treatment.

5.5(h) Statement Regarding Adjustments. Whenever the Conversion Price shall be adjusted as provided in subparagraph 5.5(f), the Company shall forthwith file, at the office of any transfer agent for the Series A Preferred Stock and Series B Preferred Stock at the principal office of the Company, a statement showing in detail the facts requiring such adjustment and the Conversion Price that shall be in effect after such adjustment, and the Company shall also cause a copy of such statement to be sent by mail, first class postage prepaid, to each holder of shares of Series A Preferred Stock and Series B Preferred Stock at its address appearing on the Company's records. Each such statement shall be signed by the Company's independent public accountants, if applicable. Where appropriate, such copy may be given in advance and may be included as part of a notice required to be mailed under the provisions of subparagraph 5.5(i).

5.5(i) Notice to Holders. In the event the Company shall propose to take any action of the type described in clause (i) (but only if the action of the type described in

clause (i) would result in an adjustment in the Conversion Price), (iii), (iv), or (v) of subparagraph 5.5(f), the Company shall give notice to each holder of shares of Series A Preferred Stock and Series B Preferred Stock, in the manner set forth in subparagraph 5.5(h), which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable upon conversion of shares of Series A Preferred Stock and Series B Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least ten (10) days prior to the date so fixed, and in case of all other action, such notice shall be given at least fifteen (15) days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

5.5(j) Treasury Stock. For the purposes of this section 5.5, the sale or other disposition of Common Stock theretofore held in the Company's treasury shall be deemed to be an issuance thereof.

5.5(k) Costs. The Company shall pay all documentary, stamp, transfer or other transactional taxes attributable to the issuance or delivery of shares of Common Stock upon conversion of any shares of Series A Preferred Stock and Series B Preferred Stock; provided that the Company shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of Series A Preferred Stock and Series B Preferred Stock in respect of which such shares are being issued.

5.5(l) Reservation of Shares. The Company shall reserve at all times so long as any shares of Series A Preferred Stock or Series B Preferred Stock remain outstanding, free from preemptive rights, out of its treasury stock (if applicable) or its authorized but unissued shares of Common Stock, or both, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock and Series B Preferred Stock, sufficient shares of Common Stock to provide for the conversion of all outstanding shares of Series A Preferred Stock and Series B Preferred Stock.

5.5(m) Approvals. If any shares of Common Stock to be reserved for the purpose of conversion of shares of Series A Preferred Stock or Series B Preferred Stock require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued or delivered upon conversion, then the Company will in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be. If, and so long as, any Common Stock into which the shares of Series A Preferred Stock or Series B Preferred Stock are then convertible is listed on any national securities exchange, the Company will, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion.

5.5(n) Valid Issuance. All shares of Common Stock which may be issued upon conversion of the shares of Series A Preferred Stock or Series B Preferred Stock will upon issuance by the Company be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof, and the Company shall take no action which will cause a contrary result.

5.6. Voting Rights

Except as specifically provided in these Articles of Incorporation or required by law, the holder of each share of Series A Preferred Stock and Series B Preferred Stock shall have only the right to one vote for each share of Common Stock into which such share of Series A Preferred Stock and Series B Preferred Stock could then be converted (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share), and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote.

Article 6. The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. The corporation is authorized to provide indemnification of its agents (as defined in Section 317 of the California General Corporation Law) for breach of their duty to the corporation and its shareholders

through bylaw provisions, agreements with the agents, votes of shareholders or disinterested directors, or otherwise, in excess of the indemnification otherwise permitted by Section 317, subject only to the limits on such excess indemnification set forth in Section 204 of the California General Corporation Law with respect to claims for breach of duty to the corporation or its shareholders. The corporation is further authorized to provide insurance for its agents as provided in Section 317(i) of the California General Corporation Law, provided that, in cases where the corporation owns all or a portion of the shares of the company issuing the insurance policy, the company and/or the policy must satisfy the conditions set forth in subsection (1) or (2) of Section 317(i), as amended.

Article 7. Any repeal or modification of the preceding Article by the shareholders of the Company shall not adversely affect any right or protection of an agent of the Company existing at the time of such repeal or modification.