

352053

180 0674

**FILED**  
in the office of the Secretary of State  
of the State of California  
NOV 13 2006

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
ARIAT INTERNATIONAL, INC.**

ELIZABETH CROSS and TODD LEVY hereby certify that:

**ONE:** They are the duly elected and acting President and Secretary, respectively, of ARIAT INTERNATIONAL, INC., a California corporation (the "**Company**").

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

**I.**

The name of this corporation is **ARIAT INTERNATIONAL, INC.**

**II.**

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.

**III.**

**A. Authorization of Shares.** The Company is authorized to issue two classes of stock to be designated, respectively, "**Common Stock**" and "**Preferred Stock**," both of which shall have no par value. The total number of shares which the Company is authorized to issue is nineteen million four hundred thousand (19,400,000) shares, ten million (10,000,000) shares of which shall be Common Stock and nine million four hundred thousand (9,400,000) shares of which shall be Preferred Stock.

**B. Designation of Additional Series of Preferred Stock.** Subject to the other terms and provisions of these Amended and Restated Articles, the Board of Directors of the Company (the "**Board**") may designate, fix the number of shares of, and determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon, any additional wholly unissued series of Preferred Stock. Subject to the other terms and provisions of these Amended and Restated Articles, as to any series of Preferred Stock the number of shares of which is authorized to be fixed by the Board, the Board may, within any limits and restrictions stated in the resolutions of the Board originally fixing the number of shares constituting such series, 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. Subject to the other terms and provisions of these Amended and Restated Articles, any new series of Preferred Stock may be designated, fixed and determined as provided herein by the Board without further approval of the holders of the Common Stock or Preferred Stock, or any series thereof.

C. All nine million four hundred thousand (9,400,000) of the authorized shares of Preferred Stock are hereby designated "Series I Preferred Stock" (the "Series I Preferred").

D. Effective upon the date of filing of these Amended and Restated Articles of Incorporation with the Secretary of State of the State of California (the "Conversion Date"), each then outstanding one (1) issued or outstanding share of the Company's Preferred Stock, including any shares designated as Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock (collectively, the "Old Convertible Preferred"), shall automatically be converted into issued and outstanding shares of Series I Preferred share-for-share on an as-converted to Common Stock basis without any action by the holders of such shares. The person entitled to receive the certificates representing shares of Series I Preferred issued upon such conversion shall be treated for all purposes as the record holder of shares of Series I Preferred on the Conversion Date. Each stock certificate representing shares of Old Convertible Preferred that are converted into shares of Series I Preferred pursuant to this Article III, Section D shall thereafter represent the same number of shares of Series I Preferred into which the shares of Old Convertible Preferred represented by such certificate have been converted hereby; *provided, however*, that each person holding of record a stock certificate that represented such shares of Old Convertible Preferred shall receive, upon surrender of such certificate or certificates, new certificates evidencing and representing the shares of Series I Preferred into which such shares of Old Convertible Preferred were converted. Any certificate for one or more shares of Old Convertible Preferred that are converted into shares of Series I Preferred pursuant to this Article III, Section D not so surrendered shall be deemed to represent the number of shares of Series I Preferred as contemplated hereby.

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

**1. DIVIDEND RIGHTS.**

(a) Holders of Series I Preferred, in preference to the holders of Common Stock, shall be entitled to receive, when, as and if declared by the Board, but only out of funds that are legally available therefor, cash dividends at the rate of ten percent (10%) of the Original Issue Price (as defined below) per annum on each outstanding share of Series I Preferred. Such dividends shall be payable only when, as and if declared by the Board and shall be non-cumulative.

(b) The "Original Issue Price" of the Series I Preferred shall be twenty dollars (\$20.00) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after November 13, 2006).

(c) So long as any shares of Series I Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock or the Preferred Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock or the Preferred Stock until all dividends as set forth in Section 1(a) above on the Series I Preferred shall have been paid or declared in full and sufficient funds therefore shall have been set apart for payment, except for:

(i) acquisitions of Common Stock by the Company pursuant to compensatory agreements with employees or consultants to the Company which permit the Company to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Company pursuant to compensatory stock purchase or stock option plans or other compensatory arrangements that are approved by the Board;

(ii) acquisitions of Common Stock or the Preferred Stock in exercise of the Company's right of first refusal to repurchase such shares pursuant to rights that are outstanding on the Original Issue Date (as defined below);

(iii) distributions to holders of Preferred Stock in accordance with Sections 1(d), 3, 4 or 6; or

(iv) distributions to holders of Common Stock in accordance with Sections 3 and 4.

(d) In the event any cash or non-cash dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Series 1 Preferred in the same form and in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(e) The provisions of Sections 1(c) and 1(d) shall not apply to a dividend payable solely in Common Stock to which the provisions of Section 5(f) hereof are applicable, or any repurchase of any outstanding securities of the Company that is approved by (i) the Board and (ii) the Series 1 Preferred as may be required by these Articles of Incorporation.

(f) The holders of the Series 1 Preferred expressly waive their rights, if any, as described in Section 502 and 503 of the General Corporation Law of California as they relate to repurchases of shares of Common Stock upon termination of employment or service as a consultant or director so long as such repurchases are in accordance with Section 1(c)(i).

## **2. VOTING RIGHTS.**

(a) **General Rights.** Each holder of shares of the Series 1 Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series 1 Preferred could be converted (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Company and in any event at the same time and in the same manner as provided to holders of Common Stock. Except as otherwise provided herein or as required by law, the Series 1 Preferred shall vote together with the Common Stock at any annual or special meeting of the shareholders and not as a separate class, and may act by written consent.

(b) **Separate Vote of Series 1 Preferred.** For so long as at least 500,000 shares of Series 1 Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series 1 Preferred after November 13, 2006) 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 seventy-five percent (75%) of the outstanding Series 1 Preferred, voting or acting by written consent as a separate class, shall be necessary for effecting or validating the following actions (whether by merger, recapitalization or otherwise):

(i) Any amendment, alteration or repeal of any provision of the Articles of Incorporation of the Company (including any filing of a Certificate of Determination) that alters or changes (x) the voting or other powers, preferences or other special rights, privileges or restrictions of the Series 1 Preferred or (y) Article IV hereof, or the adoption of any provision inconsistent with any of the foregoing,

(ii) Any increase or decrease in the authorized number of shares of Series 1 Preferred or any issuance of Series 1 Preferred after the Original Issue Date (as defined below);

(iii) Any authorization, designation or issuance, whether by reclassification or otherwise, of any new class or series of stock or any other securities, rights or interests convertible into equity securities of the Company ranking on a parity ("**Parity Stock**") with or senior ("**Senior Stock**") to the Series 1 Preferred in right of redemption, liquidation preference, voting or dividend rights (regardless of whether or not dividends are required to be declared) or any increase in the authorized or designated number of any such new class or series;

(iv) Any Acquisition (as defined herein), including without limitation, any merger or consolidation of the Company with or into any corporation if such merger or consolidation otherwise requires approval of any class or series of equity securities of the Company or would result in the shareholders of the Company immediately prior to such merger or consolidation holding less than a majority of the voting power of the stock of the surviving corporation immediately after such merger or consolidation (provided that this Section 2(b)(iv) shall not apply to any transaction that would not require approval pursuant to Section 2(b)(ix) hereof);

(v) Any Asset Transfer (as defined herein), including without limitation any action that results in the sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company, including by way of issuance or transfer of the equity securities (or rights or interests therein) of one or more subsidiaries of the Company or the assets thereof;

(vi) Any declaration or payment of dividends with respect to Common Stock (other than dividends payable solely in shares of stock other than Parity Stock or Senior Stock);

(vii) Any redemption, repurchase of or other distributions with respect to Common Stock or Preferred Stock or other equity securities of the Company or rights or interests therein (except for acquisitions of, and distributions to, Common Stock and Preferred

Stock by the Company permitted by Sections 1(c)(i), (ii), (iii) and (iv), 3 and 4 hereof, and redemptions required by Section 6 hereof);

(viii) [Reserved];

(ix) Any acquisition of another entity, business or operating unit, division or assets (other than inventory in the ordinary course) by the Company in one or a series of related transactions, including by way of merger or consolidation or purchase of assets or capital stock or other rights or interests where the consideration paid or payable (including the assumption of liabilities) by the Company in such transaction exceeds \$10,000,000;

(x) Any formation of a new direct or indirect subsidiary of the Company other than in the ordinary course of business for a bona fide business purpose, any issuance or sale, or other direct or indirect transfer, of any securities of any direct or indirect subsidiary of the Company (other than to the Company or to a direct or indirect wholly-owned subsidiary thereof); or taking any action with respect to any such direct or indirect subsidiary if such action would require the approval of the holders of the Series I Preferred or of the shareholders of the Company were such action taken by the Company or if such action would have the purpose or effect of circumventing any of the rights, powers or privileges of the Series I Preferred; and

(xi) Any amendment, alteration, or repeal of any provision of the Bylaws of the Company that (A) alters or changes the voting or other powers, preferences or other special rights, powers, privileges or restrictions of the Series I Preferred, (B) alters or changes Article VI or Article X thereof, (C) impairs the rights, powers or privileges, or increases the obligations, of the members of the Board, or (D) materially impairs the rights, powers or privileges, or increases the obligations, of the shareholders of the Company, or the adoption of any provision inconsistent with any of the foregoing.

For so long as at least 500,000 shares of Series I Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series I Preferred after November 13, 2005) 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 sixty-six and two-thirds percent (66-2/3%) of the outstanding Series I Preferred, voting or acting by written consent as a separate class, shall be necessary for effecting or validating: any voluntary dissolution or liquidation of the Company; any application for or consent to the appointment of a receiver, custodian, trustee, liquidator or similar fiduciary of the Company or of all or a substantial part of the Company's property; the making of a general assignment for the benefit of creditors, the commencement of a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect); the filing of a petition seeking to take advantage of any other law providing for the relief of debtors; or any decision to acquiesce to any petition filed against the Company in any involuntary case under any state or federal bankruptcy laws.

**(c) Election of Board of Directors.**

(i) For so long as at least 620,000 shares of Series I Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event

affecting the Series 1 Preferred after November 13, 2006), except as otherwise required by Section 6(c) below, the Board shall consist of eight (8) members and the holders of Series 1 Preferred, voting or acting by written consent as a separate class, shall be entitled to elect four (4) members of the Board (the "**Series 1 Directors**") at each meeting or pursuant to each consent of the holders of Series 1 Preferred 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.

(ii) The holders of Common Stock and Series 1 Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of 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.

(iii) In the event of a Liquidity Event Default (as defined in Section 6(c) hereof), the number of members constituting the Board shall be increased in accordance with Section 6(c), and the holders of the Series 1 Preferred, voting as a separate class, shall be entitled to elect such number of additional directors as shall be necessary to give effect to Section 6(c) hereof.

### 3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary (a "**Liquidation**"), the assets of the Company legally available for distribution to the holders of equity securities of the Company in such Liquidation (or the consideration received by the Company or its shareholders in an Acquisition or Asset Transfer, each as defined in Section 4(b) hereof), shall be distributed ratably to the holders of the Common Stock and Series 1 Preferred on an as-if-converted to Common Stock basis after giving effect to the next sentence. The proceeds distributed to the holders of Series 1 Preferred in connection with such Liquidation shall include all declared and unpaid dividends on the Series 1 Preferred.

### 4. ASSET TRANSFER OR ACQUISITION RIGHTS.

(a) In the event that the Company is a party to an Acquisition or Asset Transfer, then each holder of Series 1 Preferred and each holder of Common Stock shall be entitled to receive, for each share of Series 1 Preferred and Common Stock then held, out of the proceeds of such Acquisition or Asset Transfer, the amount of cash, securities or other property to which such holder would be entitled to receive in a Liquidation pursuant to Section 3 above.

(b) For the purposes of this Section 4: (i) "**Acquisition**" shall mean (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shareholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity in the same proportions (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (B) 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; and (ii) "**Asset Transfer**"

shall mean a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company, including by way of issuance or transfer of the equity securities (or rights or interests therein) of one or more subsidiaries of the Company or the assets thereof;

(c) In any Acquisition or Asset Transfer, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board on the date such determination is made and each type of such consideration will be allocated and paid pro rata to the holders of Series 1 Preferred (based upon the number of shares of Common Stock into which the Series 1 Preferred is then convertible) and Common Stock.

## **5. CONVERSION RIGHTS.**

The holders of the Series 1 Preferred shall have the following rights with respect to the conversion of the Series 1 Preferred into shares of Common Stock (the "**Conversion Rights**"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Series 1 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 1 Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series 1 Preferred Conversion Rate" then in effect (determined as provided in Section 5(b)) by the number of shares of Series 1 Preferred being converted.

(b) **Series 1 Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series 1 Preferred (the "**Series 1 Preferred Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series 1 Preferred by the "Series 1 Preferred Conversion Price," calculated as provided in Section 5(c).

(c) **Series 1 Preferred Conversion Price.** The conversion price for the Series 1 Preferred shall initially be the Original Issue Price of the Series 1 Preferred (the "**Series 1 Preferred Conversion Price**"). Such initial Series 1 Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series 1 Preferred Conversion Price herein shall mean the Series 1 Preferred Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Series 1 Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series 1 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 1 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 as of the date of such conversion), any

declared and unpaid dividends on the shares of Series I Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series I 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 I 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 at any time or from time to time on or after November 13, 2006 (the "**Original Issue Date**") the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series I Preferred, the Series I Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series I Preferred, the Series I Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective as provided below:

**(i)** If the Company fixes a record date to determine which holders of Common Stock are subject to the subdivision or combination, the Series I Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

**(ii)** If such record date is fixed and such subdivision or combination is not fully made on the date fixed therefor, the Series I Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series I Preferred Conversion Price shall be adjusted pursuant to this Section 5(e) to reflect the actual subdivision or combination.

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

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

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



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

(ii) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series 1 Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series 1 Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series 1 Preferred Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

(g) **Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation.** If at any time or from time to time on or after the Original Issue Date the Common Stock issuable upon the conversion of the Series 1 Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or Asset Transfer, each as defined in Section 4, or a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 5), in any such event each holder of Series 1 Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Series 1 Preferred could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation 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 5 with respect to the rights of the holders of Series 1 Preferred after such event to the end that the provisions of this Section 5 (including adjustment of the Series 1 Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series 1 Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(h) **Sale of Shares Below Series 1 Preferred Conversion Price.**

(i) If at any time or from time to time on or after the Original Issue Date the Company issues or sells, or is deemed by the express provisions of this Section 5(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 5(e), 5(f) or 5(g) above, for an Effective Price (as defined below) less than the then effective Series 1 Preferred Conversion Price (a "**Qualifying Dilutive Issuance**"), then and in each such case, the then existing Series 1 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 I Preferred Conversion Price in effect immediately prior to such issuance or sale by a fraction equal to:

(A) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received or deemed received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such then-existing Series I Preferred Conversion Price, and

(B) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined 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 outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series I 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 are issuable upon the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date with a conversion or exercise price less than or equal to the Effective Price.

(ii) No adjustment shall be made to the Series I Preferred Conversion Price in an amount less than one cent per share. Any adjustment required by this Section 5(h) shall be rounded to the nearest one cent (\$0.01) per share. Any adjustment otherwise required by this Section 5(h) that is not required to be made due to the preceding two sentences shall be included in any subsequent adjustment to the Series I Preferred Conversion Price.

(iii) For the purpose of making any adjustment required under this Section 5(h), the aggregate consideration received by the Company for any issue or sale of securities (the "**Aggregate Consideration**") shall be defined as: (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of customary and reasonable underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of customary and reasonable 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, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined 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 to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iv) For the purpose of the adjustment required under this Section 5(h), if the Company issues or sells (x) Preferred Stock or other stock, options, warrants, purchase rights, interests or other securities convertible into, or exercisable or exchangeable for, Additional Shares of Common Stock (such convertible, exercisable or exchangeable stock or securities being herein referred to as "**Convertible Securities**") or (y) 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 I Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights, interests or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise, exchange 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:

(A) in the case of such rights, interests or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options; and

(B) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the exercise, exchange or conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities).

(C) 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 for which no adjustment is made to the Conversion Price hereunder, 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, interests, options or Convertible Securities is subsequently increased or on the occurrence or non-occurrence of specified events for which no adjustment is made to the Conversion Price hereunder, 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.

(D) No further adjustment of the Series I Preferred Conversion Price, as adjusted upon the issuance of such rights, interests, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights, interests or options or the conversion of any such Convertible Securities. If any such rights, interests or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series I Preferred Conversion Price as adjusted upon the issuance of such rights, interests, options or Convertible Securities shall be readjusted to the Series I 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, interests 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, interests or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, exercised or exchanged, 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, exercise or exchange of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Series I Preferred.

(v) For the purpose of making any adjustment to the Conversion Price of the Series I Preferred required under this Section 5(h), **"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 5(h) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(A) shares of Common Stock issued upon conversion of the Series I Preferred;

(B) shares of Common Stock or Convertible Securities issued after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to compensatory stock purchase or stock option plans or other compensatory arrangements that are approved by the Board; and

(C) shares of Common Stock or Convertible Securities issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board; *provided* that the Company may not issue shares of Common Stock or Convertible Securities, in the aggregate, under such arrangements to the extent the number of shares of such Common Stock or Convertible Securities exceed one half of one percent (0.5%) of the shares of Common Stock (assuming conversion of the Series I Preferred and any other Convertible Securities of the Company) then outstanding.

References to Common Stock in the subsections of this clause (v) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h). 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 this Section 5(h), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 5(h), for such Additional Shares of Common Stock. In the event that the number of shares of Additional Shares of Common Stock or the Effective Price cannot be ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the Effective Price, as applicable, ascertainable.

(vi) In the event that the Company issues or sells or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance

(the "First Dilutive Issuance"), then in the event that the Company or any of its subsidiaries issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance as a part of the same transaction or series of related transactions as the First Dilutive Issuance (a "Subsequent Dilutive Issuance"), then and in each such case upon a Subsequent Dilutive Issuance the Series 1 Preferred Conversion Price shall be reduced to the Series 1 Preferred Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance.

(i) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series 1 Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series 1 Preferred, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and shall 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 1 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 1 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 1 Preferred. Failure to request or provide such notice shall have no effect on any such adjustment.

(j) **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 (ii) any Acquisition (as defined in Section 4) 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 4), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series 1 Preferred at least ten (10) days prior to (x) the record date, if any, specified therein; or (y) if no record date is specified, the date upon which such action is to take effect (or, in either case, such shorter period approved by the holders of seventy-five (75%) of the outstanding Series 1 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, 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, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(k) **Automatic Conversion.**

(i) Each share of Series 1 Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series 1 Preferred Conversion Price, (A) at any time upon the affirmative vote of the holders of at least seventy five percent (75%) of the outstanding shares of the Series 1 Preferred at a meeting duly called for such purpose or by action by written consent or (B) 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 (the "**Initial Public Offering**") in which (i) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$75,000,000 and (ii) the per share price is at least \$45.00 (as adjusted for stock splits, dividends, recapitalizations and the like after November 13, 2006), if the closing of such Initial Public Offering occurs on or before the 30 month anniversary of the Original Issue Date, or the per share price is at least \$50.00 (as adjusted for stock splits, dividends, recapitalizations and the like after November 13, 2006), if the closing of such Initial Public Offering occurs following the expiration of 30 months from the Original Issue Date (a "**Qualified IPO**"). Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(ii) Upon the occurrence of either of the events specified in Section 5(k)(i) above, the outstanding shares of Series 1 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 1 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 1 Preferred, the holders of Series 1 Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series 1 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 1 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 5(d). Any certificates not so delivered shall continue to represent the right to receive the Common Stock, securities or other property receivable upon such conversion and the holder of such certificates shall be entitled to all rights, powers and privileges associated with the Common Stock, securities or other property to which it is entitled.

(l) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series 1 Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series 1 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 fair market value of one share of Common Stock (as determined by the Board) on the date of conversion.

(m) **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 I 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 I Preferred. 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 I Preferred, the Company will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(n) **Notices.** Any notice required by the provisions of this Section 5 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 electronic mail or facsimile as provided for under the applicable sections of the California Corporations Code, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with 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.

(o) **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 I 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 I Preferred so converted were registered.

## 6. **LIQUIDITY TRANSACTION.**

(a) At any time on or after November 14, 2012, the holders of a majority of the then outstanding shares of Series I Preferred, may elect, as a separate class (the "**Shareholder Vote**"), to require the Company to redeem (the "**Redemption**") the Series I Preferred in whole or in part by providing written notice of such Shareholder Vote to the Company (the "**Redemption Election Notice**"). The number of shares of Series I Preferred to be redeemed in such Redemption by the Company shall be the number of the then outstanding shares of Series I Preferred elected for Redemption by the holders of Series I Preferred pursuant to Redemption Elections (as defined below).

(i) Upon receipt of the Redemption Election Notice, the Company (in addition to performing its obligations under clause (iii) below) and the holders representing a majority of the issued and outstanding shares of Series I Preferred (the "**Series I Majority**") shall have three (3) months from the date of the Redemption Election Notice to negotiate (the "**Negotiation Period**"), in good faith and using commercially reasonable efforts,

the Fair Market Value. The "**Fair Market Value**" shall mean the cash price at which each share of Common Stock (assuming conversion in full of the Series I Preferred) could be reasonably expected, based on customary analysis, to trade hands as of the date of determination of Fair Market Value, between a willing and able buyer and a willing and able seller, neither under any compulsion to act, following a full and fair process conducted by a nationally recognized investment banking firm experienced in such matters, open to all bona fide potential purchasers, pursuant to which one hundred percent (100%) of the Company's equity securities would be offered to potential purchasers and which is otherwise designed to provide the Company's shareholders with the highest equity value reasonably available.

(ii) Promptly following the determination of the Fair Market Value pursuant to this Section 6 and otherwise periodically as the Board deems appropriate, the Board shall determine (a "**Board Determination**") whether or not, in the exercise of its business judgment, it believes that the Company will be reasonably likely to be able to effect the Redemption in accordance with this Section 6(a). In the event the Board makes a negative Board Determination as to the Company's ability to so effect the Redemption (a "**Negative Board Determination**"), the Company shall, within a period of two (2) business days thereafter, provide notice of such Negative Board Determination to the holders of the Series I Preferred.

(iii) In the event that the Company and the Series I Majority cannot agree on the Fair Market Value within the Negotiation Period, the Fair Market Value shall be determined by an appraiser (the "**Appointed Arbitrator**") that is not an affiliate of the Company or of any of the holders representing a majority of the issued and outstanding shares of Series I Preferred that participated in the Shareholder Vote, or, to the knowledge of the Company and such holders of Series I Preferred, either of their respective shareholders (which may be a national or regional investment bank or national accounting firm) mutually selected by the Company and the Series I Majority, *provided*, that if the Company and the Series I Majority do not mutually agree to the Appointed Arbitrator within a period of five (5) business days after the expiration of the Negotiation Period, each of the Company and the Series I Majority shall within a period of three (3) business days select one arbitrator and within a period of five (5) business days of the appointment of such two arbitrators, the two selected arbitrators shall appoint a third arbitrator (the "**Designated Arbitrator**") who shall act as the arbitrator among the parties. Within five (5) business days of selection of the Appointed Arbitrator or the Designated Arbitrator, as the case may be (and in either case, the "**Final Arbitrator**"), the Company and the Series I Majority shall each submit to the Final Arbitrator a proposed Fair Market Value (the "**Submitted Value**"). If the Submitted Values differ by ten percent (10%) or less (using the higher of the two Submitted Values as the baseline), the Fair Market Value shall be the average of the two Submitted Values. If the Submitted Values by the Company and the Series I Majority differ by more than ten percent (10%) (using the higher of the two Submitted Values as the baseline), then no later than thirty (30) days following the delivery of the Submitted Values by the Company and the Series I Majority, the Final Arbitrator shall designate one of the two Submitted Values as the Fair Market Value for the purposes of this Section 6. In order to facilitate the negotiation and determinations of the Fair Market Value, the Company shall promptly make available all the books and records of the Company to the Series I Majority and to the Final Arbitrator and promptly provide, and cause its advisors to provide, such other information as the Series I Majority and the Final Arbitrator may reasonably request.



(iv) Upon receipt of the Redemption Election Notice, the Company shall, within fifteen (15) days, send a notice (a "**Redemption Notice**") to all holders of Series I Preferred setting forth (A) that the holders of at least a majority of the Series I Preferred have called for a Redemption and (B) the method for calculating the Redemption Price as set forth in these Restated Articles. In order to have any or all of its shares of Series I Preferred included in the Redemption, each holder shall be required to provide written notice to the Company ("**Redemption Elections**") specifying the number of shares such holder elects to include in the Redemption no later than thirty (30) days after receipt of the Redemption Notice.

(v) The Company shall effect such Redemption with respect to all (but not less than all) of the shares included in the Redemption Elections on a date determined by the Company (the "**Redemption Date**"), which in no event shall be later than the date that is the later to occur of (i) six (6) months from the date of the Redemption Election Notice and (ii) one hundred and thirty five (135) days after the date on which the Fair Market Value is finally determined (such date, the "**Redemption Deadline**"). The Company shall effect the Redemption by paying in cash in exchange for each share of Series I Preferred included in the Redemption Elections on such Redemption Date an amount (the "**Redemption Price**"), which Redemption Price shall be equal to the greater of: (A) \$1.00 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after November 13, 2006) or (B) the Fair Market Value (multiplied by the number of shares of Common Stock into which each share of Series I Preferred is then convertible), plus any declared and unpaid dividends on each share of Series I Preferred Stock.

(vi) At least thirty (30) days but no more than sixty (60) days prior to the Redemption Date, the Company shall send a notice (the "**Redemption Terms Notice**") to all holders of Series I Preferred to be redeemed setting forth (A) the Redemption Price for the shares to be redeemed on the Redemption Date; and (B) the reasonable and customary method by which such holders may obtain payment of the Redemption Price upon surrender of their share certificates representing shares subject to the Redemption Election.

(vii) On or prior to the Redemption Date, the Company shall deposit the Redemption Price in respect of all (but not less than all) shares of Series I Preferred included in the Redemption Elections with a bank or trust company having aggregate capital and surplus in excess of \$1,000,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after the Redemption Date, the Redemption Price for each such share to the respective holders upon the surrender of their share certificates. The balance of any funds deposited by the Company pursuant to this Section 6(a)(vii) remaining unclaimed at the expiration of one (1) year following such Redemption Date shall be returned to the Company promptly upon its written request.

(viii) Each holder of shares of Series I Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner designated in the Redemption Terms Notice, and thereupon the Redemption Price for each such share 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. From and after the Redemption Date, unless there shall have been a default in payment of the Redemption

Price in respect of any shares included in the Redemption Elections, including as a result of the Company being unable to pay the Redemption Price for each such share due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series 1 Preferred included in the Redemption (except the right to receive the Redemption Price upon surrender of their certificates) shall cease and terminate with respect to such shares.

(ix) In the event of the Redemption of all (but not less than all) of the shares of Series 1 Preferred subject to Redemption Elections, the Conversion Rights (as defined in Section 5) for such Series 1 Preferred shall terminate as to the shares designated for Redemption at the close of business on the last business day preceding the applicable Redemption Date, unless default is made in payment of the Redemption Price, in respect of any shares included in the Redemption Elections, including as a result of the Company being unable to pay the Redemption Price for each such share due to not having sufficient legally available funds.

(b) In the event (x) the Company fails to pay the Redemption Price and effect the Redemption in accordance with Section 6(a) on or prior to the Redemption Deadline or (y) there occurs a Negative Board Determination, the Company shall promptly pursue a full and fair process to evaluate (i) a sale or other permanent disposition of all assets of, or all but immaterial assets of, the Company, including by way of issuance or transfer of the equity securities (or rights or interests therein) of one or more subsidiaries of the Company or the assets thereof in exchange for cash and/or readily marketable securities or (ii) (A) a 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 receive cash and/or readily marketable securities in exchange for one hundred percent (100%) of their Equity Securities (as defined below) in the Company pursuant to such consolidation, merger or reorganization; or (B) a transaction or series of related transactions in which one hundred percent (100%) of the Company's Equity Securities are exchanged for cash and/or readily marketable securities (a "**Company Sale**"). The term "**Equity Securities**" means (i) any Common Stock, Preferred Stock or other security of the Company, (ii) any security, right or interest convertible into or exercisable or exchangeable for, with or without consideration, any Common Stock, Preferred Stock or other security of the Company (including any option to purchase such a convertible security), (iii) any security, right or interest carrying any warrant or right to subscribe to or purchase any Common Stock, Preferred Stock or other security of the Company or (iv) any such warrant or right. The Company shall engage a nationally recognized investment banking firm experienced in such matters to manage the Company Sale process, and the Company Sale process, which shall be under the direction of the Board, shall be open to all bona fide potential purchasers and be designed to provide the Company's shareholders with the highest equity value reasonably available and shall otherwise comply with applicable law.

(c) Promptly after the completion of the evaluation process described in Section 6(b), the Board shall consummate a Company Sale unless in the exercise of its fiduciary duties it determines it is unable to do so. In the event that either (i) after completion of the evaluation process described in Section 6(b), the Board, in the exercise of its fiduciary duties, determines that it is not viable to complete a Company Sale or (ii) the Company fails to complete

a Company Sale in accordance with Section 6(b) on or prior to the one year anniversary of the earlier of (x) the Redemption Deadline and (y) the date of a Negative Board Determination (a "*Liquidity Event Default*"). regardless of the number of directors the holders of Series 1 Preferred are entitled to elect at the time of Liquidity Event Default, then (i) the number of members constituting the Board shall automatically be increased by a number that will create sufficient vacancies to be elected by the holders of Series 1 Preferred in accordance with Section 2(c)(iii) hereof such that the holders of the then outstanding shares of Series 1 Preferred shall be entitled to elect a majority of the members of the Board at all times thereafter, (ii) the holders of a majority of the then outstanding shares of Series 1 Preferred, voting as a separate class, shall be entitled to elect directors to fill the vacancies so created and (iii) the remaining directors shall be elected as otherwise provided in these Restated Articles.

(d) Whenever under the provisions of Section 6(c) hereof the right shall have accrued to the holders of Series 1 Preferred to elect a majority of the Company's directors, and without limiting the right of the holders of Series 1 Preferred to act by written consent at any time, the Board shall, within five (5) business days after delivery to the Company at its principal office of a request to such effect by the holders of not less than a majority of the shares of Series 1 Preferred then outstanding, call a special meeting of shareholders for the election of directors, to be held upon not less than ten (10) nor more than twenty (20) days' notice to holders of Series 1 Preferred. If such notice of meeting is not given within the five (5) business days required above, the Series 1 Majority may also call such meeting and for such purposes shall have access to the stock books and records of the Company. In the case of any vacancy in the office of the directors elected by the holders pursuant to Section 6(c), the vacancy may be filled by the affirmative vote of the holders of a majority of the shares (unless unanimous written consent is required under Sections 305(b) or 603(d) of the California Corporations Code) of Series 1 Preferred then outstanding, voting together as a single class, given either at a special meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders, the holders representing a majority of the issued and outstanding Series 1 Preferred shall be entitled to remove from office such directors, subject to Section 303 of the California Corporations Code and any successor provision thereof, and to fill any vacancy caused by the resignation or death of such directors and the holders of the issued and outstanding Series 1 Preferred shall be entitled to fill any vacancy caused by the removal of such directors in accordance with applicable law. Any director elected by the holders of the shares pursuant to Section 6(c) may be removed during the aforesaid term of office, either (i) without cause by, and only by, the affirmative vote of the holders of a majority of the shares of Series 1 Preferred, given either at a special meeting of shareholders duly called for that purpose or pursuant to a written consent of shareholders, and any vacancy thereby created may be filled by the holders of a majority of the shares of Series 1 Preferred represented at such meeting or pursuant to a written consent or (ii) as otherwise provided in Sections 302 or 304 of the General Corporation Law of the State of California or any successor statute.

#### **7. NO REISSUANCE OF SERIES 1 PREFERRED.**

No shares of Series 1 Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

#### IV.

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

#### B. Indemnification.

1. **General Corporation Law of California.** The Company 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 Company and its shareholders through bylaw provisions, agreements with agents, shareholder resolutions or otherwise, 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 IV, California law is amended in a manner which permits a company 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 IV to "California law" shall to that extent be deemed to refer to California law as so amended.

2. **Right to Indemnification.** The Company shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "**Covered Person**") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**"), by reason of the fact that he or she is or was a director or officer of the Company or, while a director or officer of the Company, is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity (an "**Other Entity**"), including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 4 below, the Company shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized by the Board of Directors of the Company.

3. **Prepayment of Expenses.** The Company shall pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article IV, Section B or otherwise.

4. **Claims.** If a claim for indemnification or advancement of expenses under this Article IV, Section B is not paid in full within thirty (30) days after a written claim therefor by the Covered Person has been received by the Company, the Covered Person may file suit to

recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim.

5. **Non-exclusivity of Rights.** Rights conferred on any Covered Person by this Article IV, Section B shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of these Amended and Restated Articles of Incorporation, the By-Laws of the Company, agreement, vote of shareholders or disinterested directors or otherwise. Additionally, nothing in this Article VI shall limit the ability of the Company, in its discretion, to indemnify or advance expenses to persons whom the Company is not obligated to indemnify or advance expenses to pursuant to this Article VI.

6. **Amendment or Repeal.** Any repeal or modification of the foregoing provisions of this Article IV, Section B shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

7. **Other Indemnification and Prepayment of Expenses.** This Article IV, Section B shall not limit the right of the Company, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

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

D. Any action required or permitted by the General Corporation Law of California or these Articles of Incorporation to be taken at any annual or special meeting of the shareholders or any class or series thereof may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Company by delivery to its principal office in the State of California, its principal place of business, or an officer or agent of the Company having custody of the book in which proceedings of meetings of shareholders are recorded. Every written consent shall bear the date of signature of each holder of Common Stock and Preferred Stock who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this Article IV, Section D, written consents signed by a sufficient number of holders to take action are delivered to the Company as aforesaid. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by applicable law, be given to those holders of Common Stock and Preferred Stock who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Company.

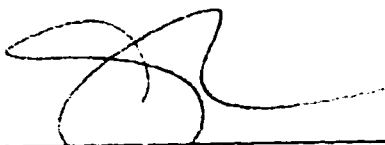
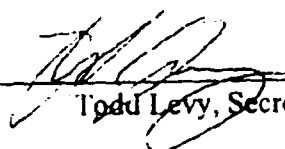
\* \* \* \*

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

**FOUR:** The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders of the Company in accordance with Sections 902 and 903 of the General Corporation Law of California. The total number of outstanding shares entitled to vote with respect to the foregoing amendment was 2,209,352 shares of Common Stock and 461,543 shares of Series A Preferred Stock, 656,667 shares of Series B Preferred Stock, 843,562 shares of Series C Preferred Stock, 1,176,113 shares of Series D Preferred Stock and 500,000 shares of Series E Preferred Stock (for purposes of this Section FOUR, each as defined in the Amended and Restated Articles of Incorporation of the Company prior the filing of these Amended and Restated Articles of Incorporation). The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required, such required vote being (i) a majority of outstanding shares of the Common Stock and Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, (ii) seventy five percent (75%) of the outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, (iii) a majority of outstanding shares of the Common Stock and (iv) a majority of the outstanding Series D Preferred Stock.


The undersigned, **ELIZABETH CROSS** and **TODD LEVY**, the President and Secretary, respectively, of **ARIAT INTERNATIONAL, 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 of their own knowledge.

Executed at Union City, California on November 13, 2006.

  
\_\_\_\_\_  
Elizabeth Cross, President  
\_\_\_\_\_  
Todd Levy, Secretary

A0659301

1800674

**FILED**   
In the Office of the Secretary of State  
of the State of California

APR 05 2007

**CERTIFICATE OF AMENDMENT TO  
ARTICLES OF INCORPORATION OF  
ARIAT INTERNATIONAL, INC.**

Elizabeth Cross and Todd Levy hereby certify that:

**ONE:** They are the duly elected and acting President and Secretary, respectively, of ARIAT INTERNATIONAL, INC., a California corporation (the "**Company**").

**TWO:** Article III, Sections A and C of the existing Amended and Restated Articles of Incorporation of the Company are hereby amended and restated to read as follows:

**A. Authorization of Shares.** The Company is authorized to issue two classes of stock to be designated, respectively, "**Common Stock**" and "**Preferred Stock**," both of which shall have no par value. The total number of shares which the Company is authorized to issue is thirty-eight million eight hundred thousand (38,800,000) shares, twenty million (20,000,000) shares of which shall be Common Stock and eighteen million eight hundred thousand (18,800,000) shares of which shall be Preferred Stock. Effective upon the date of filing of this Certificate of Amendment to Articles of Incorporation with the Secretary of State of the State of California, every one (1) share of Common Stock shall be split into two (2) shares of Common Stock and every one (1) share of Preferred Stock shall be split into two (2) shares of Preferred Stock.

**C.** All eighteen million eight hundred thousand (18,800,000) of the authorized shares of Preferred Stock are hereby designated "**Series 1 Preferred Stock**" (the "**Series 1 Preferred**").


**THREE:** The foregoing amendment to the Articles of Incorporation has been duly approved by the Board of Directors of the Company.

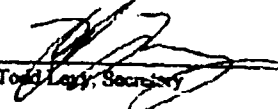
**FOUR:** The foregoing amendment to the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares entitled to vote with respect to the foregoing amendment was 446,920 shares of Common Stock and 5,715,876 shares of Series 1 Preferred. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50% of the outstanding shares of Common Stock and more than 75% of the outstanding shares of Series 1 Preferred.



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

Executed in Union City, California, this 4<sup>th</sup> day of April 2007.

  
\_\_\_\_\_  
Elizabeth Cross, President

  
\_\_\_\_\_  
Todd Levy, Secretary