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BASIC AMENDMENT

PROXIMITY TECHNOLOGIES, INC.

Certificate of Status	0
Certified Copy	1
Page Count	18
Estimated Charge	\$43.75

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Amend & Rest
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**CERTIFICATE OF AMENDMENT AND RESTATEMENT
OF
ARTICLES OF INCORPORATION
OF
PROXIMITY TECHNOLOGIES, INC.**

Proximity Technologies, Inc., a corporation organized and existing under the laws of the State of Florida (the "Corporation"), in order to amend and restate its Articles of Incorporation in accordance with the requirements of Sections 607.1006 and 607.1007, Florida Statutes, does hereby, by and through the undersigned officer, certify as follows:

1. The Amended and Restated Articles of Incorporation filed together herewith are a complete restatement of the Corporation's Articles of Incorporation, and supersede the Corporation's Articles of Incorporation filed on September 28, 2004 and all amendments thereto.
2. The Amended and Restated Articles of Incorporation filed together herewith contain amendments to the Corporation's existing Articles of Incorporation that require the approval of the Corporation's stockholders.
3. The Amended and Restated Articles of Incorporation and the amendments contained therein were unanimously approved and recommended to the stockholders for approval by the Board of Directors of the Corporation on September 26, 2005 by unanimous written consent in lieu of a meeting pursuant to Section 607.0821, Florida Statutes, and in accordance with Section 607.1003, Florida Statutes.
4. The Amended and Restated Articles of Incorporation and the amendments contained therein were approved and adopted by all of the stockholders of the Corporation on September 26, 2005 by unanimous written consent in lieu of a meeting pursuant to Section 607.0704, Florida Statutes, which is sufficient to approve such amendments in accordance with Section 607.1003, Florida Statutes.

IN WITNESS WHEREOF, THE CORPORATION has caused this Certificate of Amendment and Restatement to be executed and acknowledged by its President and Chief Executive Officer this 26th day of September 2005.

PROXIMITY TECHNOLOGIES, INC.

By: 
D. Gregory Smith
President and Chief Executive Officer

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**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
PROXIMITI TECHNOLOGIES, INC.**

The Board of Directors and the Shareholders of Proximiti Technologies, Inc. have adopted and approved the following provisions as the Amended and Restated Articles of Incorporation of this corporation.

ARTICLE I

Name

The name of this corporation is Proximiti Technologies, Inc. (the "Corporation").

ARTICLE II

Term Of Existence

This Corporation is to exist perpetually.

ARTICLE III

Principal Office and Mailing Address

The address of the principal office and mailing address of this Corporation shall be:

5410 Mariner St., Suite 175
Tampa, FL 33609

ARTICLE IV

Registered Office and Registered Agent

The registered office of this Corporation shall be located at 101 E. Kennedy Boulevard, Suite 2700, Tampa, Florida 33602, and the registered agent of this Corporation at such office shall be Karen R. Smith. This Corporation shall have the right to change such registered office and such registered agent from time to time, as provided by law.

ARTICLE V

Business and Purposes

The general purpose for which this Corporation is organized is the transaction of any and all lawful business for which corporations may be incorporated under the Florida Business Corporation Act, and any amendments thereto, and in connection therewith, this Corporation

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shall have and may exercise any and all powers conferred from time to time by law upon corporations formed under such Act.

ARTICLE VI

Capital Stock

(A) Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Thirty Three Million Five Hundred Seventy Three Thousand Six Hundred Forty One (33,573,641) shares, each with a par value of \$0.001 per share. Twenty Seven Million Five Hundred Seventy Three Thousand Six Hundred Forty One (27,573,641) shares shall be Common Stock and Six Million (6,000,000) shares shall be Preferred Stock.

1. Series of Common Stock. The Common Stock authorized by these Amended and Restated Articles of Incorporation (the "Restated Articles") may be issued from time to time in one or more series. The first series of Common Stock shall be designated "Class A Common Stock" and shall consist of Seven Million Five Hundred Seventy Three Thousand Six Hundred Forty One (7,573,641) shares. The second series of Common Stock shall be designated "Class B Common Stock" and shall consist of Twenty Million (20,000,000) shares. Except as otherwise indicated herein, references in these Restated Articles to "Common Stock" shall mean Class A Common Stock and Class B Common Stock, as a single class.

2. Series of Preferred Stock. The Preferred Stock authorized by these Restated Articles may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of Six Million (6,000,000) shares.

(B) Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Article IV(B).

1. Dividend Provisions. The holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation, provided that an adjustment to the Conversion Price (as defined below) of such other securities or rights has been made in accordance with Section 4(d)(ii) below) on the Common Stock of the Corporation, at the rate of \$ 0.08 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series A Preferred Stock, payable quarterly when, as and if declared by the Board of Directors of the Corporation (the "Board of Directors"). Such dividends shall not be cumulative. No dividends shall be payable to holders of Common Stock, unless an additional equal amount is declared and paid to the holders of shares of Series A Preferred Stock.

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2. Liquidation.

(a) Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary:

(i) The holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to \$1.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series A Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(ii) After and subject to the payment in full of the distribution required pursuant to Section 2(a)(i) above, the holders of the Class A Common Stock of the Corporation shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Class B Common Stock by reason of their ownership thereof, an amount per share equal to \$1.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Class A Common Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Class A Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Class A Common Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Remaining Assets. Upon the completion of the distributions required by Section 2(a) above, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of the Series A Preferred Stock (each a "Series A Holder"), the holders of the Class A Common Stock and the holders of the Class B Common Stock, pro rata based on the number of shares of Class B Common Stock held by each (assuming conversion of all such Series A Preferred Stock and Class A Common Stock into Class B Common Stock).

(c) Certain Acquisitions.

(i) Deemed Liquidation. For purposes of this Section 2, a liquidation, dissolution, or winding up of the Corporation shall be deemed to occur if the Corporation shall sell, convey, or otherwise dispose of all or substantially all of its property or business or merge with or into or consolidate with any other corporation, limited liability company or other entity or a transaction or series of related transaction in which the shareholders of the Corporation immediately prior to the transaction own less than 50% of the voting power of the surviving entity following the transaction (any such transaction, a "Liquidation

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Transaction"), provided that none of the following shall be considered a Liquidation Transaction: (A) a consolidation with a wholly-owned subsidiary of the Corporation, or (B) a merger effected exclusively to change the domicile of the Corporation. In the event of a merger or consolidation of the Corporation that is deemed pursuant to this section to be a Liquidation Transaction, all references in this Section 2 to "assets of the Corporation" shall be deemed instead to refer to the aggregate consideration to be paid to the holders of the Corporation's capital stock in such merger or consolidation. Nothing in this Section 2(c)(i) shall require the distribution to shareholders of anything other than proceeds of such transaction in the event of a merger or consolidation of the Corporation.

(ii) Valuation of Consideration. In the event of a Liquidation Transaction, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange or The Nasdaq Stock Market ("Nasdaq"), the value shall be based on a formula approved by the Board of Directors and derived from the closing prices of the securities on such exchange or Nasdaq over a specified time period;

(2) If actively traded over-the-counter, the value shall be based on a formula approved by the Board of Directors and derived from the closing bid or sales prices (whichever is applicable) of such securities over a specified time period; and

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

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

(iii) Notice of Liquidation Transaction. The Corporation shall give each holder of record of Series A Preferred Stock, and each holder of record of Common Stock written notice of any impending Liquidation Transaction not later than 10 days prior to the shareholders' meeting called to approve such Liquidation Transaction, or 10 days prior to the closing of such Liquidation Transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Transaction. The first of such notices shall describe the material terms and conditions of the impending Liquidation Transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. Unless such notice requirements are waived, the Liquidation Transaction shall not take place sooner than 10 days after the Corporation has given the first notice provided for herein or sooner than 10 days after the Corporation has given notice

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of any material changes provided for herein. Notwithstanding the other provisions of these Restated Articles, all notice periods or requirements in these Restated Articles may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of a majority of the voting power of the outstanding shares of Series A Preferred Stock, Class A Common Stock and Class B Common Stock that are entitled to such notice rights.

(iv) Effect of Noncompliance. In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the Liquidation Transaction to be postponed until the requirements of this Section 2 have been complied with, or cancel such Liquidation Transaction, in which event the rights, preferences, privileges and restrictions of the holders of the Series A Preferred Stock and Class A Common Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to in Section 2(c)(iii).

3. Redemption. The Series A Holders shall have redemption rights as follows:

(a) Redemption Date and Price. At any time during the period beginning on the fourth anniversary of Series A Purchase Date (as defined herein) and ending on the sixth anniversary of the Series A Purchase Date the holders of not less than a majority of the then outstanding shares of Series A Preferred Stock may submit a written request to the Corporation to redeem all or some of their shares (a "Redemption Election"), and as soon as practicable within 30 days after its receipt of the Redemption Election (the "Redemption Date"), the Corporation shall, to the extent it may lawfully do so, redeem the number of shares specified in the Redemption Election in accordance with the procedures set forth in this Section 3 by paying in cash therefor a sum per share equal to the Conversion Price (as defined below) of the Series A Preferred Stock together with interest thereon at the rate of 8% per annum from the Series A Purchase Date to the date of redemption, plus any declared but unpaid dividends on such shares (the "Redemption Price"). If the redemption of fewer than all of the outstanding shares of Series A Preferred Stock is requested pursuant to this Section 3(a), such redemption shall be made on a pro rata basis among the holders of the Series A Preferred Stock based upon the total Redemption Price applicable to each holder's shares of Series A Preferred Stock.

(b) Procedure. Within 15 days following its receipt of the Redemption Election, the Corporation shall mail a written notice, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Series A Preferred Stock at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the applicable Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in Section 3(c), on or after the Redemption Date, each holder of the Series A Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered

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certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) **Effect of Redemption; Insufficient Funds.** From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series A Preferred Stock designated for redemption in the Redemption Notice (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon the total Redemption Price applicable to each such holder's shares of Series A Preferred Stock which are subject to redemption on such Redemption Date. The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed.

4. **Conversion.** The Series A Holders shall have conversion rights as follows (the "**Conversion Rights**"):

(a) **Right to Convert.** Subject to Section 4(c), each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Class B Common Stock as is determined by dividing \$1.00 by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series A Preferred Stock shall be \$1.00. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d).

(b) **Automatic Conversion.** Immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Class B Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"), the public offering price of which is not less than \$18.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) and which results in aggregate cash proceeds to the Corporation of not less than \$50,000,000 (net of underwriting discounts and commissions) or (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series A Preferred Stock, each share of Series A Preferred Stock and Class A Common Stock shall automatically be converted into shares of Class B Common Stock at the Conversion Price at the time in effect for such share in the case of Series A Preferred Stock and on a one-for-one basis in the case of the Class A Common Stock.

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(c) **Mechanics of Conversion.** Before any holder of the Series A Preferred Stock or Class A Common Stock shall be entitled to convert such Series A Preferred Stock or Class A Common Stock, as applicable, into shares of Class B Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Class B Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Class B Common Stock to which such holder shall be entitled as aforesaid. 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 such stock to be converted, and the person or persons entitled to receive the shares of Class B Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class B Common Stock as of such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering shares of stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any persons entitled to receive Class B Common Stock upon conversion of such stock shall not be deemed to have converted such stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation should issue, at any time after the Series A Purchase Date, any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Series A Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for the Series A Preferred Stock in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i):

(A) **Price Adjustment.** Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i),

(1) During the period commencing on the Series A Purchase Date and ending on the first anniversary of the Series A Purchase Date (the "**Full-Ratchet Period**"), the Conversion Price shall be adjusted to a price equal to the price paid per share for such Additional Stock;

(2) At any time following the Full Ratchet Period, the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "**Outstanding Common**") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation

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for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall not include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below, but only to the extent the consideration to be paid upon such exercise, conversion or exchange per share of underlying Common Stock is less than or equal to the per share consideration for the Additional Stock which has given rise to the Conversion Price adjustment being calculated.

(B) Definition of "Additional Stock". For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date) other than

(1) Securities issued pursuant to stock dividends, stock splits or similar transactions, as described in Section 4(d)(ii) hereof;

(2) Up to 1,400,000 shares of Class B Common Stock (or such other number of shares of Class B Common Stock approved by the Board of Directors of the Corporation, including the affirmative vote of the Series A Directors (as defined in Section 5 herein)) issued or issuable to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation;

(3) Capital stock, or warrants or options to purchase capital stock, issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation, including the affirmative vote of the Series A Directors (as defined in Section 5 herein);

(4) Shares of Class B Common Stock issued or issuable upon conversion of the Series A Preferred Stock;

(5) Up to Six Hundred Ninety Five Thousand Sixteen (695,016) shares of Class A Common Stock issued or issuable to direct or common law employees of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation; or

(6) Shares of Class B Common Stock issued or issuable upon conversion of the Class A Common Stock.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for the Series A Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

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(D) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, 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.

(E) Deemed Issuances of Common Stock. In the case of the issuance (whether before, on or after the applicable Purchase Date) of securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (the "Common Stock Equivalents"), the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon conversion, exchange or exercise (assuming the satisfaction of any conditions to convertibility, exchangeability or exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of any Common Stock Equivalents and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such securities were issued or such Common Stock Equivalents were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related Common Stock Equivalents (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion, exchange or exercise of any Common Stock Equivalents (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(2) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents, other than a change resulting from the antidilution provisions thereof, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the conversion, exchange or exercise of such Common Stock Equivalents.

(3) Upon the termination or expiration of the convertibility, exchangeability or exercisability of any Common Stock Equivalents, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Common Stock Equivalents that remain convertible, exchangeable or exercisable) actually issued upon the conversion, exchange or exercise of such Common Stock Equivalents.

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(4) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Section 4(d)(i)(E)(1) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(2) or 4(d)(i)(E)(3).

(F) No Increased Conversion Price. Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(2) and 4(d)(i)(E)(3), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) Stock Splits and Dividends. In the event the Corporation should at any time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(i) or 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the Series A Holders shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the Series A Holders shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the

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Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) No Impairment. The Corporation will not, through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock or Class A Common Stock, as applicable, and the number of shares of Class B Common Stock to be issued shall be rounded down to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock or Class A Common Stock, as applicable, the holder is at the time converting into Class B Common Stock and the number of shares of Class B Common Stock issuable upon such aggregate conversion. If the conversion would result in any fractional share, the Corporation shall, in lieu of issuing any such fractional share, pay the holder thereof an amount in cash equal to the fair market value of such fractional share on the date of conversion, as determined in good faith by the Board of Directors.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for the Series A Preferred Stock at the time in effect, and (C) the number of shares of Class B Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of the Series A Preferred Stock.

(i) Notices of Record Date. In the event of any taking by the Corporation 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 (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each Series A Holder, at least 10 days prior to the date specified therein, a notice specifying

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the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class B Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock and Class A Common Stock, such number of its shares of Class B Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock and Class A Common Stock, and if at any time the number of authorized but unissued shares of Class B Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock and Class A Common Stock, in addition to such other remedies as shall be available to the holder of Series A Preferred Stock and Class A Common Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class B Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Restated Articles.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. Voting Rights.

(a) Generally. Except as expressly provided by these Restated Articles or as provided by law, the Series A Holders shall have the same voting rights as the holders of Common Stock and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation, and the holders of Common Stock and the Series A Preferred Stock shall vote together as a single class on all matters, except with respect to the election of directors, as set forth in Section 5(b) below. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held, and each Series A Holder shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series A Preferred Stock could be converted. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Director Voting. The Board of Directors shall consist of five (5) members. At each meeting of shareholders at which members of the Board of Directors are to be elected, or whenever members of the Board of Directors are to be elected by written consent of the shareholders, (i) the Series A Holders, voting together as a separate class, shall be entitled to elect two (2) members of the Board of Directors (the "Series A Directors"), (ii) the holders of the Common Stock, voting together as a separate class, shall be entitled to elect two (2) members of the Board of Directors (the "Common Directors") and (iii) the Series A Directors and the Common Directors shall unanimously nominate the fifth (5th) member of the Board of Directors (the "Independent Director") of the Corporation to the Shareholders for vote thereon.

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(c) **Director Vacancy.** In the case of any vacancy in the office of a Series A Director, a majority of the Series A Holders voting together as a separate class shall elect a successor or successors to serve for the unexpired term of the Series A Director whose office is vacant. In the case of any vacancy in the office of a Common Director, a majority of the holders of Common Stock voting together as a separate class shall elect a successor or successors to serve for the unexpired term of the Common Director whose office is vacant. In the case of any vacancy in the office of an Independent Director, the remaining Series A Directors and Common Directors shall unanimously nominate a successor, or if there is no remaining Series A Directors and Common Directors, a majority of the holders of Common Stock and Preferred Stock, voting together as a single class shall elect a successor or successors to serve for the unexpired term of the Independent Director whose office is vacant. Any director who shall have been elected by the holders of a particular class or series of stock may be removed without cause by, and only by, the vote of the holders of shares of such class of stock.

6. **Protective Provisions.** So long as at least 500,000 shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting together as a class:

- (a) effect a Liquidation Transaction;
- (b) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares of such series;
- (c) increase or decrease (other than by conversion or in accordance with the redemption provisions of these Restated Articles) the total number of authorized shares of Series A Preferred Stock or Common Stock;
- (d) authorize or issue, or obligate itself to issue, any other equity security, including any security (other than Series A Preferred Stock) convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series A Preferred Stock with respect to voting (other than the pari passu voting rights of Common Stock), dividends, redemption, conversion or upon liquidation;
- (e) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock, other than in accordance with the redemption provisions of these Restated Articles; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at no greater than cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;
- (f) increase or decrease the authorized number of directors of the Corporation above or below five (5);

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(g) declare or pay any dividend on or make any distribution with respect to any of the Corporation's Common Stock; or

(h) amend, alter or change the Bylaws of the Corporation or these Restated Articles.

7. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. These Restated Articles shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, as provided in Section 1 of Article IV(B), the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, or the occurrence of a Liquidation Transaction, the assets of the Corporation shall be distributed as set forth in Section 2 of Article IV(B).

3. Conversion. The holders of the Class A Common Stock shall have conversion rights as set forth in Section 4 of Article IV(B).

4. Redemption. The Common Stock is not redeemable.

5. Voting Rights. Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote.

ARTICLE VII

Limitation of Directors Liability

(A) To the fullest extent permitted by the Florida Business Corporation Act, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director.

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(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

(C) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Articles of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

ARTICLE VIII

Bylaws

(A) Adoption, Amendment, Etc. The power to adopt the by-laws of this Corporation, to alter, amend or repeal the by-laws, or to adopt new by-laws, shall be vested in the Board of Directors of this Corporation; provided, however, that any by-law or amendment thereto as adopted by the Board of Directors may be altered, amended or repealed by vote of the shareholders entitled to vote thereon, or a new by-law in lieu thereof may be adopted by vote of the shareholders, and the shareholders may prescribe in any by-law made by them that such by-law shall not be altered, amended or repealed by the Board of Directors.

(B) Scope. The by-laws of this Corporation shall be for the government of this Corporation and may contain any provisions or requirements for the management or conduct of the affairs and business of this Corporation, provided the same are not inconsistent with the provisions of these Amended and Restated Articles of Incorporation, or contrary to the laws of the State of Florida or of the United States.

ARTICLE IX

Amendments

This Corporation reserves the right to amend, alter, change or repeal any provisions contained in these Amended and Restated Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon the shareholders herein are subject to this reservation.

* * *

SEP. 26. 2005 2:10PM

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IN WITNESS WHEREOF, Proximiti Technologies, Inc. has caused these Amended and Restated Articles of Incorporation to be executed and acknowledged by its undersigned duly authorized officer this 26th day of September, 2005.



D. Gregory Smith
Chief Executive Officer