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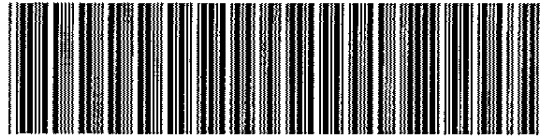
(Business Entity Name)

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RECEIVED  
05 MAR 15 AM 9:36  
DIVISION OF CORPORATION

FILED  
05 MAR 15 AM 9:55  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

3/15

CORPDIRECT AGENTS, INC. (formerly CCRS)  
103 N. MERIDIAN STREET, LOWER LEVEL  
TALLAHASSEE, FL 32301  
222-1173

FILING COVER SHEET  
ACCT. #FCA-14

*Att:*  
*Karon*  
*BEYER*

CONTACT: Kevin R. Roberts

DATE: March 15, 2005

REF. #: 000638.35872

CORP. NAME: CRYOLIFE, INC.

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> ARTICLES OF INCORPORATION   | <input checked="" type="checkbox"/> ARTICLES OF AMENDMENT | <input type="checkbox"/> ARTICLES OF DISSOLUTION |
| <input type="checkbox"/> ANNUAL REPORT               | <input type="checkbox"/> TRADEMARK/SERVICE MARK           | <input type="checkbox"/> FICTITIOUS NAME         |
| <input type="checkbox"/> FOREIGN QUALIFICATION       | <input type="checkbox"/> LIMITED PARTNERSHIP              | <input type="checkbox"/> LIMITED LIABILITY       |
| <input type="checkbox"/> REINSTATEMENT               | <input type="checkbox"/> MERGER                           | <input type="checkbox"/> WITHDRAWAL              |
| <input type="checkbox"/> CERTIFICATE OF CANCELLATION |   |  |
| <input type="checkbox"/> OTHER:                      |   |  |

STATE FEES PREPAID WITH CHECK# 511782 FOR \$ 35.00

AUTHORIZATION FOR ACCOUNT IF TO BE DEBITED:

\_\_\_\_\_ COST LIMIT: \$ \_\_\_\_\_

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| <input type="checkbox"/> CERTIFICATE OF STATUS |   |  |

Examiner's Initials

**ARTICLES OF AMENDMENT TO THE  
ARTICLES OF INCORPORATION  
OF  
CRYOLIFE, INC.**

**FILED**

05 MAR 15 AM 9:55

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

TO: Department of State  
Tallahassee, Florida 32304

Pursuant to the provisions of Section 607.1006 of the Florida Statutes, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

1. The name of the corporation is CRYOLIFE, INC.
2. The following amendments of the Articles of Incorporation were adopted by the directors of the Corporation or a committee thereof on the 15<sup>th</sup> day of March, 2005, in the manner prescribed by the Florida General Corporation Act, Sections 607.0602 and 607.1006:

Article V of the Articles of Incorporation is amended by appending thereto a new subsection (d) as follows:

(d) There shall be a series of Convertible Preferred Stock, par value \$.01 per share, of the Corporation with the following designated number of shares, relative rights, preferences, and limitations thereof:

(1) **Designation and Amount.** The shares of such series shall be designated as "6% Convertible Preferred Stock" (the "Convertible Preferred Stock"), and the authorized number of shares constituting such series shall be 460,000.

(2) **Definitions.** For purposes of the Convertible Preferred Stock, in addition to those terms otherwise defined herein, the following terms shall have the meanings indicated:

"Affiliate" of any specified person shall mean any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, "control," when used with respect to any specified person means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Applicable Price" shall have the meaning specified in Section 7(i).

"Automatic Conversion" shall have the meaning specified in Section 7(j).

"Automatic Conversion Date" shall have the meaning specified in Section 7(j).

“Automatic Conversion Notice” shall have the meaning specified in Section 7(j).

“Board of Directors” shall mean the Board of Directors of the Corporation or a committee of such Board duly authorized to act for it hereunder.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Corporation to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Transfer Agent.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which the banking institutions in The City of New York, New York are authorized or obligated by law or executive order to close or be closed.

“Commission” shall mean the Securities and Exchange Commission.

“Common Stock” shall mean the class of capital stock of the Corporation designated as Common Stock, par value \$0.01 per share, at the date hereof. Subject to the provisions of Section 7(e), shares issuable on conversion of the Convertible Preferred Stock shall include only shares of such class or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which are not subject to redemption by the Corporation; provided that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“Common Stock Fundamental Change” shall have the meaning specified in Section 7(l).

“Conversion Price” shall have the meaning specified in Section 7(a).

“Corporation” shall mean CryoLife, Inc., a Florida corporation, and, shall include its successors and assigns.

“Custodian” shall mean American Stock Transfer & Trust Company as custodian with respect to the Global Certificate, or any successor entity thereto.

“Depository” means, with respect to the Convertible Preferred Stock issuable or issued in the form of a Global Certificate, the person specified in Section 13 as the Depository with respect to the Convertible Preferred Stock, until a successor shall have been appointed and become such pursuant to the applicable provisions of these Articles, and thereafter, “Depository” shall mean or include such successor. The foregoing sentence shall likewise apply to any subsequent successor or successors.

“Dividend Payment Date” shall have the meaning specified in Section 3(a).

“Dividend Payment Record Date” shall have the meaning specified in Section 3(a).

“Dividend Periods” shall mean quarterly dividend periods commencing on the first day of January, April, July and October of each year and ending on and including the day preceding the first day of the next succeeding Dividend Period (other than the initial Dividend Period which shall commence on the Issue Date and end on and include June 30, 2005).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Fundamental Change” shall have the meaning specified in Section 7(l).

“Global Certificate” shall have the meaning specified in Section 13(a).

“Holder,” “holder of shares of Convertible Preferred Stock,” or “holder of the Convertible Preferred Stock,” as applied to any share of Convertible Preferred Stock, or other similar terms (but excluding the term “beneficial holder”), shall mean any person in whose name at the time a particular share of Convertible Preferred Stock is registered on the Corporation’s stock records, which shall include the books of the Transfer Agent in respect of the Corporation and any stock transfer books of the Corporation.

“Issue Date” shall mean the first date on which shares of the Convertible Preferred Stock are issued.

“Liquidation Preference” shall have the meaning specified in Section 4(a).

“Officers’ Certificate”, when used with respect to the Corporation, shall mean a certificate signed by (a) one of the President, the Chief Executive Officer, Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word added before or after the title “Vice President”) and (b) by one of the Treasurer or any Assistant Treasurer, Secretary or any Assistant Secretary or Controller of the Corporation, which is delivered to the Transfer Agent.

“Make-Whole Dividend Payment” shall have the meaning specified in Section 7(k).

“Non-Stock Fundamental Change” shall have the meaning specified in Section 7(l).

“Purchaser Stock Price” shall have the meaning specified in Section 7(l).

“Person” shall mean a corporation, an association, a partnership, an individual, a joint venture, a joint stock company, a trust, a limited liability company, an unincorporated organization or a government or an agency or a political subdivision thereof.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Subsidiary” means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Corporation or by one or more other Subsidiaries, or by the Corporation and one or more other Subsidiaries. For the purposes of this definition, “voting stock” means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“Trading Day” has the meaning specified in Section 7(l).

“Transfer Agent” means American Stock Transfer & Trust Company or such other agent or agents of the Corporation as may be designated by the Board of Directors of the Corporation as the transfer agent for the Convertible Preferred Stock.

The definitions of certain other terms are specified in Section 7.

**(3) Dividends.**

(a) Holders of the Convertible Preferred Stock are entitled to receive, when, as and if declared by the Board of Directors, out of the funds of the Corporation legally available therefor, cash dividends at the annual rate of 6% of the Liquidation Preference, payable in equal quarterly installments on January 1, April 1, July 1 and October 1 (each a “Dividend Payment Date”), commencing July 1, 2005 (and, in the case of any accrued but unpaid dividends, at such additional times and for such interim periods, if any, as determined by the Board of Directors). If any Dividend Payment Date shall be on a day other than a Business Day, then the Dividend Payment Date shall be on the next succeeding Business Day. Dividends on the Convertible Preferred Stock will be cumulative from the Issue Date, whether or not in any Dividend Period or Periods there shall be funds of the Corporation legally available for the payment of such dividends and whether or not such dividends are declared, and will be payable to holders of record as they appear on the stock books of the Corporation on such record dates (each such date, a “Dividend Payment Record Date”), which shall be not more than 60 days nor less than 10 days preceding the Dividend Payment Dates thereof, as shall be fixed by the Board of Directors. Dividends on the Convertible Preferred Stock shall accrue (whether or not declared) on a daily basis from the Issue Date, and accrued dividends for each Dividend Period shall accumulate to the extent not paid on the Dividend Payment Date first following the Dividend Period for which they accrue. As used herein, the term “accrued” with respect to dividends includes both accrued and accumulated dividends.

(b) The amount of dividends payable per share for each full Dividend Period for the Convertible Preferred Stock shall be computed by dividing the annual dividend rate by four (rounded down to the nearest one one-hundredth (1/100) of one cent). The amount of dividends payable for the initial Dividend Period on the Convertible Preferred Stock, or any other period shorter or longer than a full Dividend Period on the Convertible Preferred Stock, shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Holders of shares of Convertible Preferred Stock called for redemption on a redemption date falling between the close of business on a Dividend Payment Record Date and the opening of business on the

corresponding Dividend Payment Date shall, in lieu of receiving such dividend on the Dividend Payment Date fixed therefor, receive such dividend payment together with all other accrued and unpaid dividends on the date fixed for redemption (unless such holders convert such shares in accordance with Section 7 hereof). Holders of shares of Convertible Preferred Stock shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of cumulative dividends, as herein provided. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Convertible Preferred Stock which may be in arrears.

(c) So long as any shares of Convertible Preferred Stock are outstanding, no dividends, except as described in the next succeeding sentence, shall be declared or paid or set apart for payment on any class or series of stock of the Corporation ranking, as to dividends, on a parity with the Convertible Preferred Stock, for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Convertible Preferred Stock for all Dividend Periods terminating on or prior to the applicable Dividend Payment Date. When dividends are not paid in full or a sum sufficient for such payment is not set apart, as aforesaid, upon the shares of Convertible Preferred Stock and any other class or series of stock ranking on a parity as to dividends with Convertible Preferred Stock, all dividends declared upon shares of Convertible Preferred Stock and all dividends declared upon such other stock shall be declared pro rata so that the amounts of dividends per share declared on the Convertible Preferred Stock and such other stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of Convertible Preferred Stock and on such other stock bear to each other.

(d) So long as any shares of the Convertible Preferred Stock are outstanding, no other stock of the Corporation ranking on a parity with the Convertible Preferred Stock as to dividends or upon liquidation, dissolution or winding up shall be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund or otherwise for the purchase or redemption of any shares of any such stock) by the Corporation or any Subsidiary unless (i) the full cumulative dividends, if any, accrued on all outstanding shares of Convertible Preferred Stock shall have been paid or set apart for payment for all past Dividend Periods and (ii) sufficient funds shall have been set apart for the payment of the dividend for the current Dividend Period with respect to the Convertible Preferred Stock.

(e) So long as any shares of the Convertible Preferred Stock are outstanding, no dividends (other than dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, Common Stock or other stock ranking junior to the Convertible Preferred Stock, as to dividends and upon liquidation, dissolution or winding up) shall be declared or paid or set apart for payment and no other distribution shall be declared or made or set apart for payment, in each case upon the Common Stock or any other stock of the Corporation ranking junior to the Convertible Preferred Stock as to dividends or upon liquidation, dissolution or winding up, nor shall any Common Stock nor any other such stock of the Corporation ranking junior to the Convertible Preferred Stock as to dividends or upon liquidation, dissolution or winding up be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund or otherwise for the purchase or redemption of any shares of any such stock) by the Corporation or any Subsidiary

(except (A) by conversion into or exchange for stock of the Corporation ranking junior to the Convertible Preferred Stock as to dividends and upon liquidation, dissolution or winding up; or (B) repurchases of unvested shares of the Corporation's capital stock at cost upon termination of the employment or consultancy of the holder thereof, provided such repurchases are approved by the Board of Directors of the Corporation in good faith) unless, in each case (i) the full cumulative dividends, if any, accrued on all outstanding shares of Convertible Preferred Stock and any other stock of the Corporation ranking on a parity with the Convertible Preferred Stock as to dividends shall have been paid or set apart for payment for all past Dividend Periods and all past dividend periods with respect to such other stock and (ii) sufficient funds shall have been set apart for the payment of the dividend for the current Dividend Period with respect to the Convertible Preferred Stock and for the current dividend period with respect to any other stock of the Corporation ranking on a parity with the Convertible Preferred Stock as to dividends.

**(4) Liquidation Preference.**

(a) In the event of any voluntary or involuntary dissolution, liquidation or winding up of the Corporation (for the purposes of this Section 4, a "Liquidation"), before any distribution of assets shall be made to the holders of Common Stock or the holders of any other stock of the Corporation that ranks junior to the Convertible Preferred Stock upon Liquidation, the holder of each share of Convertible Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, a liquidation preference in an amount equal to \$50 per share (the "Liquidation Preference") plus all dividends accrued and unpaid on such share up to the date of distribution of the assets of the Corporation to the holders of Convertible Preferred Stock, and the holders of any class or series of preferred stock ranking on a parity with the Convertible Preferred Stock as to Liquidation shall be entitled to receive the full respective liquidation preferences (including any premium) to which they are entitled and shall receive all accrued and unpaid dividends with respect to their respective shares through and including the date of distribution.

(b) If upon any Liquidation of the Corporation, the assets available for distribution to the holders of Convertible Preferred Stock and any other stock of the Corporation ranking on a parity with the Convertible Preferred Stock upon Liquidation which shall then be outstanding shall be insufficient to pay the holders of all outstanding shares of Convertible Preferred Stock and all other such parity stock the full amounts (including all dividends accrued and unpaid) of the liquidating distribution to which they shall be entitled, then the holders of each series of such stock will share ratably in any such distribution of assets first in proportion to their respective liquidation preferences until such preferences are paid in full, and then in proportion to their respective amounts of accrued but unpaid dividends. After payment of any such liquidating preference and accrued dividends, the holders of shares of the Convertible Preferred Stock will not be entitled to any further participation in any distribution of assets by the Corporation.

(c) For purposes of this Section 4, a Liquidation shall not include (i) any consolidation or merger of the Corporation with or into any other corporation, (ii) any liquidation, dissolution, winding up or reorganization of the Corporation immediately followed by reincorporation as another corporation or (iii) a sale or other disposition of all or substantially



all of the Corporation's assets to another corporation unless in connection therewith the Liquidation of the Corporation is specifically approved by all requisite corporate action.

(d) The holder of any shares of Convertible Preferred Stock shall not be entitled to receive any payment owed for such shares under this Section 4 until such holder shall cause to be delivered to the Corporation (i) the certificate(s) representing such shares of Convertible Preferred Stock and (ii) transfer instrument(s) satisfactory to the Corporation and sufficient to transfer such shares of Convertible Preferred Stock to the Corporation free of any adverse interest. No interest shall accrue on any payment upon Liquidation after the due date thereof.

**(5) Redemption at the Option of the Corporation.**

(a) Convertible Preferred Stock may not be redeemed by the Corporation prior to April 7, 2008, on or after which the Corporation, at its option, may redeem the shares of Convertible Preferred Stock, in whole or in part, out of funds legally available therefor, at any time or from time to time, subject to the notice provisions and provisions for partial redemption described below, during the period beginning on April 1 of the years shown below (beginning on April 7, 2008 and ending on March 31, 2009, in the case of the first such period), at the following redemption prices per share plus an amount equal to accrued and unpaid dividends, if any, to (but excluding) the date fixed for redemption, whether or not earned or declared:

<u>Year</u>	<u>Redemption Price</u>
2008	\$52.10
2009	\$51.80
2010	\$51.50
2011	\$51.20
2012	\$50.90
2013	\$50.60
2014	\$50.30

and \$50 at April 1, 2015 and thereafter; provided that, if the applicable redemption date is a Dividend Payment Date, the quarterly payment of dividends becoming due on such date shall be payable to the holders of such shares of Convertible Preferred Stock registered as such on the relevant record date subject to the terms and provisions of Section 3.

No sinking fund, mandatory redemption or other similar provision shall apply to the Convertible Preferred Stock.

(b) In case the Corporation shall desire to exercise the right to redeem the shares of Convertible Preferred Stock, in whole or in part, pursuant to Section 5(a), it shall fix a date for redemption, and it, or at its request (which must be received by the Transfer Agent at least ten (10) Business Days prior to the date the Transfer Agent is requested to give notice as described below unless a shorter period is agreed to by the Transfer Agent), the Transfer Agent in the name of and at the expense of the Corporation, shall mail or cause to be mailed a notice of such redemption at least thirty (30) and not more than ninety (90) days prior to the date fixed for

redemption to the holders of the shares of Convertible Preferred Stock so to be redeemed at their last addresses as the same appear on the Corporation's stock records (provided that if the Corporation shall give such notice, it shall also give such notice, and notice of the shares of Convertible Preferred Stock to be redeemed, to the Transfer Agent). Such mailing shall be by first class mail. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any share of Convertible Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other share of Convertible Preferred Stock.

Each such notice of redemption shall specify the number of shares of Convertible Preferred Stock to be redeemed, the date fixed for redemption, the redemption price at which such shares of Convertible Preferred Stock are to be redeemed, the place or places of payment, that payment will be made upon presentation and surrender of the certificate or certificates representing such shares of Convertible Preferred Stock, that dividends accrued to (but excluding) the date fixed for redemption will be paid as specified in said notice, and that on and after said date dividends thereon or on the portion thereof to be redeemed will cease to accrue. Such notice shall also state the current Conversion Price and the date on which the right to convert such shares of Convertible Preferred Stock into Common Stock will expire.

On or prior to the redemption date specified in the notice of redemption given as provided in this Section 5(b), the Corporation will deposit with a bank or trust company having an office or agency in the Borough of Manhattan, City of New York and having a combined capital and surplus of at least \$50,000,000 (the "Deposit Bank") an amount of money sufficient to redeem on the redemption date all the shares of Convertible Preferred Stock so called for redemption (other than those theretofore surrendered for conversion into Common Stock) at the appropriate redemption price, together with accrued dividends to (but excluding) the date fixed for redemption; provided that if such payment is made on the redemption date it must be received by the Deposit Bank by 10:00 a.m. New York City time, on such date. If any shares of Convertible Preferred Stock called for redemption are converted pursuant hereto, any money deposited with the Deposit Bank or so segregated and held in trust for the redemption of such shares of Convertible Preferred Stock shall be paid to the Corporation upon its request, or, if then held by the Corporation shall be discharged from such trust. The Corporation shall be entitled to make any deposit of funds contemplated by this Section 5 under arrangements designed to permit such funds to generate interest or other income for the Corporation, and the Corporation shall be entitled to receive all interest and other income earned by any funds while they shall be deposited as contemplated by this Section 5, provided that the Corporation shall maintain on deposit funds sufficient to satisfy all payments which the deposit arrangement shall have been established to satisfy. If the conditions precedent to the disbursement of any funds deposited by the Corporation pursuant to this Section 5 shall not have been satisfied within two years after the establishment of such funds, then (i) such funds shall be returned to the Corporation upon its request; (ii) after such return, such funds shall be free of any trust which shall have been impressed upon them; (iii) the person entitled to the payment for which such funds shall have been originally intended shall have the right to look only to the Corporation for such payment, subject to applicable escheat laws; and (iv) the trustee which shall have held such funds shall be relieved of any responsibility for such funds upon the return of such funds to the Corporation.

If fewer than all the outstanding shares of Convertible Preferred Stock are to be redeemed, shares to be redeemed shall be selected by the Corporation from outstanding shares of Convertible Preferred Stock not previously called for redemption by lot or pro rata (as near as may be) or by any other equitable method determined by the Corporation in its sole discretion.

(c) If notice of redemption has been given as above provided, on and after the date fixed for redemption (unless the Corporation shall default in the payment of the redemption price, together with accrued and unpaid dividends to (but excluding) said date), dividends on such shares of Convertible Preferred Stock so called for redemption shall cease to accrue and such shares of Convertible Preferred Stock shall be deemed no longer outstanding and the holders thereof shall have no right in respect of such shares of Convertible Preferred Stock except the right to receive the redemption price thereof and accrued and unpaid dividends to (but excluding) the date fixed for redemption, without interest thereon. On presentation and surrender of the certificate or certificates representing such shares of Convertible Preferred Stock at a place of payment specified in said notice, such shares of Convertible Preferred Stock to be redeemed shall be redeemed by the Corporation at the applicable redemption price, together with dividends accrued thereon to (but excluding) the date fixed for redemption; provided that, if the applicable redemption date is a Dividend Payment Date, the quarterly payment of dividends becoming due on such date shall be payable to the holders of such shares of Convertible Preferred Stock registered as such on the relevant record date subject to the terms and provisions of Section 3.

If fewer than all the shares of Convertible Preferred Stock represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

(d) In connection with any redemption of Convertible Preferred Stock, the Corporation may arrange for the purchase and conversion of any Convertible Preferred Stock by an agreement with one or more investment bankers or other purchasers to purchase such Convertible Preferred Stock by paying to the Deposit Bank in trust for the holders of Convertible Preferred Stock, on or before the date fixed for redemption, an amount not less than the applicable redemption price, together with dividends accrued to (but excluding) the date fixed for redemption, of such Convertible Preferred Stock. Notwithstanding anything to the contrary contained in this Section 5, the obligation of the Corporation to pay the redemption price of such Convertible Preferred Stock, together with dividends accrued to (but excluding) the date fixed for redemption, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, a copy of which will be filed with the Deposit Bank prior to the date fixed for redemption, any certificate representing the Convertible Preferred Stock so converted not duly surrendered for conversion by the holders thereof may, at the option of the Corporation, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such holders and (notwithstanding anything to the contrary contained in Section 7) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the date fixed for redemption (and the right to convert any such Convertible Preferred Stock shall be deemed to have been extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Corporation, the Deposit

Bank shall hold and dispose of any such amount paid to it in the same manner as it would monies deposited with it by the Corporation for the redemption of Convertible Preferred Stock.

(6) **Shares to Be Retired.** Any share of Convertible Preferred Stock converted, redeemed or otherwise acquired by the Corporation shall be retired and canceled and shall upon cancellation be restored to the status of authorized but unissued shares of preferred stock, subject to reissuance by the Board of Directors as shares of Convertible Preferred Stock of one or more series.

(7) **Conversion.** Holders of shares of Convertible Preferred Stock shall have the right to convert all or a portion of such shares (including fractions of such shares) into shares of Common Stock, as follows:

(a) Subject to and upon compliance with the provisions of this Section 7, a holder of shares of Convertible Preferred Stock shall have the right, at the holder's option, at any time after the Issue Date (except that, with respect to shares of Convertible Preferred Stock which shall be called for redemption, such right shall terminate at the close of business on the Business Day immediately preceding the date fixed for redemption of such shares of Convertible Preferred Stock unless the Corporation shall default in payment due upon redemption thereof) to convert any of such shares into that number of fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) obtained by dividing \$50 by the Conversion Price, as adjusted in accordance with this Section 7, by surrender of the certificate or certificates representing such share of Convertible Preferred Stock so to be converted in the manner provided in Section 7(b). As used herein, the initial "Conversion Price" shall mean the dollar amount obtained by dividing \$50 by 6.2189. A holder of the Convertible Preferred Stock is not entitled to any rights of a holder of Common Stock until such holder has converted his, her or its Convertible Preferred Stock to Common Stock, and only to the extent such Convertible Preferred Stock is deemed to have been converted to Common Stock under this Section 7.

(b) In order to exercise the conversion right, the holder of the Convertible Preferred Stock to be converted shall surrender the certificate or certificates (with the Conversion Notice, the form of which is set forth in Section 14(a), on the reverse of the certificate or certificates duly completed) representing the number of shares to be so converted, duly endorsed, at an office or agency of the Transfer Agent in the Borough of Manhattan, City of New York, and shall give written notice of conversion to the office or agency that the holder elects to convert such number of shares of Convertible Preferred Stock specified in said notice. Such notice shall also state the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be of Common Stock issuable on such conversion shall be issued, and shall be accompanied by transfer taxes, if required pursuant to Section 7(f). Each such share of Convertible Preferred Stock surrendered for conversion shall, unless the shares of Common Stock issuable on conversion are to be issued in the same name in which such share of Convertible Preferred Stock is registered, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Corporation duly executed by the holder or his, her or its duly authorized attorney.

As promptly as practicable after satisfaction of the requirements for conversion set forth above, the Corporation shall issue and shall deliver to such holder or, if shares of Common Stock issuable on conversion are to be issued in a name other than that in which such share of Convertible Preferred Stock to be converted is registered (as if such transfer were a transfer of the share of Convertible Preferred Stock so converted), to such other person, at the office or agency of the Transfer Agent in the Borough of Manhattan, City of New York, the certificate or certificates representing the number of shares of Common Stock issuable upon the conversion of such share of Convertible Preferred Stock or a portion thereof in accordance with the provisions of this Section 7, the payment (in appropriate form) of the Make-Whole Dividend Payment (as defined in Section 7(k)), if any, payable upon such conversion, and a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion, as provided in Section 7(c) (which payment, if any, shall be paid no later than five Business Days after satisfaction of the requirements for conversion set forth above).

Each conversion pursuant to Section 7(a) shall be deemed to have been effected on the date on which the requirements set forth above in this Section 7(b) have been satisfied as to such share of Convertible Preferred Stock so converted, and the person in whose name any certificate or certificates for the shares of Common Stock shall be issuable upon such conversion shall be deemed to have become on said date the holder of record of the shares represented thereby; provided, however, that if any such surrender occurs on any date when the stock transfer books of the Corporation shall be closed, the conversion shall be effected on the next succeeding day on which such stock transfer books are open, and the person in whose name the certificates are to be issued shall be the record holder thereof for all purposes, but such conversion shall be at the Conversion Price in effect on the date upon which certificate or certificates representing such shares of Convertible Preferred Stock shall be surrendered. All shares of Common Stock delivered upon conversion of the Convertible Preferred Stock will, upon delivery, be duly authorized, validly issued and fully paid and nonassessable.

In the case of any share of Convertible Preferred Stock which is converted after any record date with respect to the payment of a dividend on the Convertible Preferred Stock and prior to the close of business on the Business Day prior to the next succeeding Dividend Payment Date, the dividend due on such Dividend Payment Date shall be payable on such Dividend Payment Date to the holder of record of such share as of such preceding record date notwithstanding such conversion; provided that shares of Convertible Preferred Stock surrendered for conversion during the period between the close of business on any record date with respect to the payment of a dividend on the Convertible Preferred Stock and prior to the close of business on the Business Day prior to the next succeeding Dividend Payment Date must (except in the case of shares of Convertible Preferred Stock which (a) have been called for redemption and a notice of redemption has been sent to the holders of Convertible Preferred Stock pursuant to Section 5(b) or (b) have been elected to be automatically converted and for which an Automatic Conversion Notice has been issued in accordance with Section 7(j)) be accompanied by payment in funds acceptable to the Corporation of an amount equal to the dividend payable on such Dividend Payment Date on the shares of Convertible Preferred Stock being surrendered for conversion. The Transfer Agent shall not be required to accept for conversion any shares of Convertible Preferred Stock not accompanied by any payment required by the preceding sentence. Except as provided in this paragraph or Section 7(k), no payment or

adjustment shall be made upon any conversion on account of any dividends accrued on shares of Convertible Preferred Stock surrendered for conversion or on account of any dividends on the Common Stock issued upon conversion.

(c) In connection with the conversion of any shares of Convertible Preferred Stock (whether pursuant to Section 7(a) or Section 7(j)), a portion of such shares may be converted; however, no fractional shares of Common Stock or scrip representing fractional shares shall be issued upon conversion of the Convertible Preferred Stock. If any fractional share of stock otherwise would be issuable upon the conversion of the Convertible Preferred Stock, the Corporation shall make an adjustment therefor in cash at the current market value thereof to the holder of the Convertible Preferred Stock. The current market value of a share of Common Stock shall be the Closing Price on the first Trading Day immediately preceding the day on which the Convertible Preferred Stock (or a specified portion thereof) is deemed to have been converted and such Closing Price shall be determined as provided in Section 7(l). If more than one share (or fraction thereof) shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Convertible Preferred Stock so surrendered.

(d) The Conversion Price shall be adjusted from time to time by the Corporation as follows:

(i) In case the Corporation shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date (as defined in Section 7(l)) fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately prior to the opening of business on the day following the Record Date. If any dividend or distribution of the type described in this Section 7(d)(i) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(ii) In case the Corporation shall issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them (for a period expiring within forty-five (45) days after the date fixed for the determination of stockholders entitled to receive such rights or warrants) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price (as defined in Section 7(l)) on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Record Date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus

the number of shares which the aggregate offering price of the total number of shares so offered would purchase at such Current Market Price, and of which the denominator shall be the number of shares of Common Stock outstanding on the close of business on the Record Date plus the total number of additional shares of Common Stock so offered for subscription or purchase. Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. In the event that such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than the Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(iii) In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(iv) In case the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Corporation (other than any dividends or distributions to which Section 7(d)(i) applies) or evidences of its indebtedness, cash or other assets (including securities, but excluding (1) any rights or warrants referred to in Section 7(d)(ii) or (2) dividends and distributions paid exclusively in cash (the foregoing hereinafter in this Section 7(d)(iv) called the "Securities")), then, in each such case, the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Record Date (as defined in Section 7(l)) with respect to such distribution by a fraction of which the numerator shall be the Current Market Price (determined as provided in Section 7(l)) on such date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) on such date of the portion of the Securities so distributed applicable to one share of Common Stock and the

denominator shall be such Current Market Price, such reduction to become effective immediately prior to the opening of business on the day following the Record Date; provided, however, that in the event the then fair market value (as so determined) of the portion of the Securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of the Convertible Preferred Stock shall have the right to receive upon conversion of the Convertible Preferred Stock (or any portion thereof) the amount of Securities such holder would have received had such holder converted such Convertible Preferred Stock (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 7(d)(iv) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price pursuant to Section 7(l) to the extent possible, unless the Board of Directors in a board resolution determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the holder of the Convertible Preferred Stock.

For purposes of this Section 7(d)(iv) and Sections 7(d)(i) and (ii), any dividend or distribution to which this Section 7(d)(iv) is applicable that also includes shares of Common Stock to which 7(d)(i) applies, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 7(d)(ii) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock to which Section 7(d)(i) applies or rights or warrants to which Section 7(d)(ii) applies (and any Conversion Price reduction required by this Section 7(d)(iv) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Price reduction required by Sections 7(d)(i) and (ii) with respect to such dividend or distribution shall then be made) except (A) the Record Date of such dividend or distribution shall be substituted as "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "Record Date fixed for such determination" and "Record Date" within the meaning of Section 7(d)(i) and as "the date fixed for the determination of stockholders entitled to receive such rights or warrants", "the Record Date fixed for the determination of the stockholders entitled to receive such rights or warrants" and "such Record Date" within the meaning of Section 7(d)(ii), and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 7(d)(i).

In the event that the Corporation implements a stockholders' rights plan (a "New Rights Plan") or amends any existing stockholders' rights plan (as amended, an "Amended Rights Plan" and together with any New Rights Plan, a "Rights Plan"), such Rights Plan



shall provide that upon conversion of the Convertible Preferred Stock the holders will receive, subject to any restrictions set forth in the Rights Plan applicable to holders of Common Stock, but in addition to the Common Stock issuable upon such conversion, the rights under such Rights Plan (notwithstanding the occurrence of an event causing such rights to separate from the Common Stock at or prior to the time of conversion). Any distribution of rights or warrants pursuant to the Rights Plan complying with the requirements set forth in the immediately preceding sentence of this paragraph ("Plan Requirements") shall not constitute a distribution of rights or warrants for purposes of this Section 7(d) and no adjustment shall be made to the Conversion Price as a result of the issuance of rights and warrants under a Rights Plan meeting the Plan Requirements. Rights or warrants distributed by the Corporation (other than under a Rights Plan that complies with the Plan Requirements) to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Corporation's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 7(d)(iv) (and no adjustment to the Conversion Price under this Section 7(d)(iv) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different securities, evidences of indebtedness or other assets or entitle the holder to purchase a different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and record date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Price under this Section 7(d)(iv), (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants all of which shall have expired or been terminated without exercise, the Conversion Price shall be readjusted as if such rights and warrants had never been issued.

(v) In case the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any cash that is distributed upon a merger or consolidation to which Section 7(e) applies or as part of a distribution referred to in Section 7(d) (iv)), then, immediately after the close of business on the Record Date with respect to such distribution, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately

prior to the close of business on such Record Date by a fraction (i) the numerator of which shall be equal to the Current Market Price on the Record Date less an amount equal to the quotient of (x) the amount of such distribution and (y) the number of shares of Common Stock outstanding on the Record Date and (ii) the denominator of which shall be equal to the Current Market Price on such date, provided, however, that in the event the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of the Convertible Preferred Stock shall have the right to receive upon conversion of shares of Convertible Preferred Stock the amount of cash such holder would have received had such holder converted such shares immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared. Any cash distribution to all holders of Common Stock as to which the Corporation makes the election permitted by Section 7(d)(xiii) and as to which the Corporation has complied with the requirements of such Section shall be treated as not having been made for all purposes of this Section 7(d)(v).

(vi) In case a tender offer made by the Corporation or of any Subsidiary for all or any portion of the Common Stock shall expire and such tender offer (as amended upon the expiration thereof) shall require the payment of consideration to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares (as defined below)) then, immediately prior to the opening of business on the day after the date upon which occurred the last time tenders could have been made pursuant to such tender offer (the "Expiration Time"), the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to close of business on the date of the Expiration Time by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered shares) on the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of (x) the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction (if any) to become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Corporation is obligated to purchase shares pursuant to any such tender offer, but the Corporation is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender offer had not been made. If the application of this

Section 7(d)(vi) to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 7(d)(vi).

(vii) In case of a tender or exchange offer made by a person other than the Corporation or any Subsidiary for an amount which increases the offeror's ownership of Common Stock to more than 25% of the Common Stock outstanding and shall involve the payment by such person of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) at the last time (the "Tender Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds the Current Market Price of the Common Stock on the Trading Day next succeeding the Tender Expiration Time, and with respect to which, as of the Tender Expiration Time, the Board of Directors is not recommending rejection of the offer, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the Tender Expiration Time by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) on the Tender Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Tender Expiration Time and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Tender Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Tender Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Tender Purchased Shares) on the Tender Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Tender Expiration Time, such reduction to become effective immediately prior to the opening of business on the day following the Tender Expiration Time. In the event that such person is obligated to purchase shares pursuant to any such tender or exchange offer, but such person is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender or exchange offer had not been made. Notwithstanding the foregoing, the adjustment described in this Section 7(d)(vii) shall not be made if, as of the Tender Expiration Time, the offering documents with respect to such offer disclose a plan or intention to cause the Corporation to engage in any consolidation or merger of the Corporation with or into any other corporation or corporations (whether or not affiliated with the Corporation), or successive consolidations or mergers in which the Corporation or its successor or successors shall be a party or parties, or any sale, conveyance or lease (or successive sales, conveyances or leases) of all or substantially all of the property of the Corporation, to any other corporation (whether or not affiliated with the Corporation), authorized to acquire and operate the same and which shall be organized under the laws of the United States of America, any state thereof or the District of Columbia; provided, however, that each share of Convertible Preferred Stock shall remain outstanding, or unaffected or shall be converted into or exchanged for

convertible preferred stock of the corporation (if other than the Corporation) formed by such consolidation, or into which the Corporation shall have been merged, or by the corporation which shall have acquired or leased such property having powers, preferences and relative, participating, optional or other rights and qualifications, limitations and restrictions substantially similar to (but no less favorable than) a share of Convertible Preferred Stock.

(viii) The Corporation may make such reductions in the Conversion Price, in addition to those required by Sections 7(d)(i), (ii), (iii), (iv), (v), (vi), and (vii), as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(ix) To the extent permitted by applicable law, the Corporation from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least twenty (20) days, the reduction is irrevocable during the period and the Board of Directors shall have made a determination that such reduction would be in the best interests of the Corporation, which determination shall be conclusive and described in a Board Resolution. Whenever the Conversion Price is reduced pursuant to the preceding sentence, the Corporation shall mail to each holder of the Convertible Preferred Stock at his, her or its last address appearing on the Corporation's stock records a notice of the reduction at least fifteen (15) days prior to the date the reduced Conversion Price takes effect, and such notice shall state the reduced Conversion Price and the period during which it will be in effect.

No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any adjustments which by reason of this Section 7(d)(ix) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under Section 7 shall be made by the Corporation and shall be made to the nearest cent or to the nearest one hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Stock.

(x) Whenever the Conversion Price is adjusted as herein provided, the Corporation shall promptly file with the Transfer Agent an Officers' Certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Promptly after delivery of such certificate, the Corporation shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to each holder of the Convertible Preferred Stock at his, her or its last address appearing on the Corporation's stock records, within twenty (20) days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(xi) In any case in which this Section 7(d) provides that an adjustment shall become effective immediately after a Record Date for an event, the Corporation may defer until the occurrence of such event (i) issuing to the holder of any share of Convertible Preferred Stock converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder of Convertible Preferred Stock any amount in cash in lieu of any fraction pursuant to Section 7(c).

(xii) For purposes of this Section 7(d), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Corporation will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Corporation.

(xiii) In lieu of making any adjustment to the Conversion Price pursuant to Section 7(d)(v), the Corporation may elect to reserve an amount of cash for distribution to the holders of the Convertible Preferred Stock upon the conversion of the Convertible Preferred Stock so that any such holder converting Convertible Preferred Stock will receive upon such conversion, in addition to the shares of Common Stock and other items to which such holder is entitled, the full amount of cash which such holder would have received if such holder had, immediately prior to the Record Date for such distribution of cash, converted its Convertible Preferred Stock into Common Stock, together with any interest accrued with respect to such amount, in accordance with this Section 7(d)(xiii). The Corporation may make such election by providing an Officers' Certificate to the Transfer Agent to such effect on or prior to the payment date for any such distribution and depositing with the Deposit Bank (as defined in Section 5(b)) on or prior to such date an amount of cash equal to the aggregate amount the holders of the Convertible Preferred Stock would have received if such holders had, immediately prior to the Record Date for such distribution, converted all of the Convertible Preferred Stock into Common Stock, with irrevocable instructions and authority to the Deposit Bank that such funds be applied in the manner set forth in this Section 7(d)(xiii). The Corporation shall instruct the Deposit Bank to invest any such funds so deposited in marketable obligations issued or fully guaranteed by the United States government with a maturity not more than three (3) months from the date of issuance. Upon conversion of the Convertible Preferred Stock by a holder, the holder will be entitled to receive, in addition to the Common Stock issuable upon conversion, an amount of cash equal to the amount such holder would have received if such holder had, immediately prior to the Record Date for such distribution, converted its Convertible Preferred Stock into Common Stock, along with such holder's pro rata share of any accrued interest earned as a consequence of the investment of such funds. Promptly after making an election pursuant to this Section 7(d)(xiii), the Corporation shall give or shall cause to be given notice to all holders of the Convertible Preferred Stock of such election, which notice shall state the amount of cash such holders shall be entitled to receive (excluding

interest) upon conversion of the Convertible Preferred Stock as a consequence of the Corporation having made such election.

(e) In the event that the Corporation shall be a party to any transaction (including, without limitation (a) any recapitalization or reclassification of shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination of Common Stock), (b) any consolidation of the Corporation with, or merger of the Corporation into, any other person, or any merger of another person into the Corporation (other than a merger that does not result in a reclassification, conversion, exchange or cancellation of Common Stock), (c) any sale, transfer or lease of all or substantially all of the assets of the Corporation or (d) any compulsory share exchange) pursuant to which either shares of Common Stock shall be converted into the right to receive other securities, cash or other property, or, in the case of a sale or transfer of all or substantially all of the assets of the Corporation, the holders of Common Stock shall be entitled to receive other securities, cash or other property, then appropriate provision shall be made so that the holder of each share of Convertible Preferred Stock then outstanding shall have the right thereafter to convert such Convertible Preferred Stock only into: (x) in the case of any such transaction that does not constitute a Common Stock Fundamental Change (as defined in Section 7(l)) and subject to funds being legally available for such purpose under applicable law at the time of such conversion, the kind and amount of the securities, cash or other property that would have been receivable upon such recapitalization, reclassification, consolidation, merger, sale, transfer or share exchange by a holder of the number of shares of Common Stock issuable upon conversion of such share of Convertible Preferred Stock immediately prior to such recapitalization, reclassification, consolidation, merger, sale, transfer or share exchange, after giving effect, in the case of any Non-Stock Fundamental Change (as defined in Section 7(l)), to any adjustment in the Conversion Price in accordance with Section 7(i)(i), and (y) in the case of any such transaction that constitutes a Common Stock Fundamental Change, common stock of the kind received by holders of Common Stock as a result of such Common Stock Fundamental Change in an amount determined in accordance with Section 7(i)(ii). The company formed by such consolidation or resulting from such merger or that acquires such assets or that acquires the Corporation's shares, as the case may be, shall make provision in its certificate or articles of incorporation or other constituent document to establish such right. Such certificate or articles of incorporation or other constituent document shall provide for adjustments that, for events subsequent to the effective date of such certificate or articles of incorporation or other constituent document, shall be as nearly equivalent as may be practicable to the relevant adjustments provided for in this Section 7. The above provisions shall similarly apply to successive transactions of the type described in this Section 7(e).

(f) The issue of stock certificates representing the shares of Common Stock on conversions of the Convertible Preferred Stock shall be made without charge to the holders of such shares for any issuance tax in respect thereof imposed by the government of the United States or any political subdivision thereof or other cost incurred by the Corporation in connection with such conversion and/or the issuance of such shares. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than the name in which the shares of Convertible Preferred Stock with respect to which such shares of Common Stock are issued are registered, and the

Corporation shall not be required to issue or deliver any such stock certificate unless and until the person or persons requesting the issue thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

(g) The Corporation covenants that all shares of Common Stock which may be delivered upon conversion of shares of Convertible Preferred Stock will upon delivery be duly and validly issued and fully paid and non-assessable, free of all liens and charges and not subject to any preemptive rights.

The Corporation covenants that it will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued shares of Common Stock or its issued shares of Common Stock held in its treasury, or both, a sufficient number of shares of Common Stock for the purpose of effecting conversions of shares of Convertible Preferred Stock not theretofore converted into Common Stock. For purposes of this reservation of Common Stock, the number of shares of Common Stock which shall be deliverable upon the conversion of all outstanding shares of Convertible Preferred Stock shall be computed as if at the time of computation all outstanding shares of Convertible Preferred Stock were held by a single holder. The issuance of shares of Common Stock upon conversion of shares of Convertible Preferred Stock is authorized in all respects.

The Corporation shall from time to time, in accordance with the laws of the State of Florida, use its best efforts to increase the authorized number of shares of Common Stock if at any time the number of shares of authorized and unissued Common Stock shall not be sufficient to permit the conversion of all the then outstanding shares of Convertible Preferred Stock.

Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Convertible Preferred Stock, the Corporation will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue shares of such Common Stock at such adjusted Conversion Price.

The Corporation covenants that if any shares of Common Stock to be provided for the purpose of conversion of the Convertible Preferred Stock hereunder require registration with or approval of any governmental authority under any Federal or State law before such shares may be validly issued upon conversion, the Corporation will in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be.

The Corporation further covenants that if at any time the Common Stock shall be listed on the New York Stock Exchange, the Nasdaq National Market or any national securities exchange or automated quotation system the Corporation will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon conversion of the Convertible Preferred Stock.

(h) In case:

(i) the Corporation shall declare a dividend (or any other distribution) on its Common Stock (that would require an adjustment in the Conversion Price pursuant to Section 7(d)); or

(ii) the Corporation shall authorize the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Corporation is a party and for which approval of any stockholders of the Corporation is required, or of the sale or transfer of all or substantially all of the assets of the Corporation; or

(iv) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation;

the Corporation shall cause to be filed with the Transfer Agent and to be mailed to each holder of the Convertible Preferred Stock at his, her or its address appearing on the Corporation's stock records, as promptly as possible but in any event at least fifteen days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

(i) Notwithstanding any other provisions in this Section 7 to the contrary, if any Fundamental Change (as defined in Section 7(l)) occurs, then the Conversion Price in effect will be adjusted immediately after such Fundamental Change as described below. In addition, in the event of a Common Stock Fundamental Change, shares of Convertible Preferred Stock shall thereafter be convertible solely into common stock of the kind received by holders of Common Stock as the result of such Common Stock Fundamental Change.

For purposes of calculating any adjustment to be made pursuant to this Section 7(i) in the event of a Fundamental Change, immediately after such Fundamental Change (and for such purposes a Fundamental Change shall be deemed to occur on the earlier of (a) the occurrence of



such Fundamental Change and (b) the date, if any, fixed for determination of stockholders entitled to receive the cash, securities, property or other assets distributable in such Fundamental Change to holders of the Common Stock):

(i) in the case of a Non-Stock Fundamental Change, the Conversion Price of the Convertible Preferred Stock immediately following such Non-Stock Fundamental Change shall be the lower of (A) the Conversion Price in effect immediately prior to such Non-Stock Fundamental Change, but after giving effect to any other prior adjustments effected pursuant to this Section 7, and (B) the product of (1) the Applicable Price (as defined in Section 7(l)) and (2) a fraction, the numerator of which is \$50 and the denominator of which is (x) the amount of the redemption price for one share of Convertible Preferred Stock if the redemption date were the date of such Non-Stock Fundamental Change (or if the date of such Non-Stock Fundamental Change falls within the period commencing on the first date of original issuance of the Convertible Preferred Stock through March 31, 2006 the twelve-month period commencing April 1, 2006, or the period commencing April 1, 2007 and ending April 6, 2008, the product of 106.0%, 105.4% or 104.8%, respectively, and \$50) plus (y) any then-accrued and unpaid distributions on one share of Convertible Preferred Stock; and

(ii) in the case of a Common Stock Fundamental Change, the Conversion Price of the Convertible Preferred Stock immediately following such Common Stock Fundamental Change shall be the Conversion Price in effect immediately prior to such Common Stock Fundamental Change, but after giving effect to any other prior adjustments effected pursuant to this Section 7, multiplied by a fraction, the numerator of which is the Purchaser Stock Price (as defined in Section 7(l)) and the denominator of which is the Applicable Price; provided, however, that in the event of a Common Stock Fundamental Change in which (A) 100% of the value of the consideration received by a holder of Common Stock is common stock of the successor, acquiror or other third party (and cash, if any, paid with respect to any fractional interests in such common stock resulting from such Common Stock Fundamental Change) and (B) all of the Common Stock shall have been exchanged for, converted into or acquired for, common stock of the successor, acquiror or other third party (and any cash with respect to fractional interests), the Conversion Price of the Convertible Preferred Stock immediately following such Common Stock Fundamental Change shall be the Conversion Price in effect immediately prior to such Common Stock Fundamental Change multiplied by a fraction, the numerator of which is one (1) and the denominator of which is the number of shares of common stock of the successor, acquiror or other third party received by a holder of one share of Common Stock as a result of such Common Stock Fundamental Change.

(j) The Corporation may elect to automatically convert all or any portion of the Convertible Preferred Stock (an "Automatic Conversion") at any time if the Closing Price of the Corporation's Common Stock has exceeded 150% of the Conversion Price for at least 20 Trading Days during a 30-day Trading Day period, ending within five Trading Days prior to the date of the Automatic Conversion Notice (as defined below). If fewer than all the outstanding shares of Convertible Preferred Stock are to be converted in connection with any Automatic Conversion, shares to be converted shall be selected by the Corporation from outstanding shares

of Convertible Preferred Stock by lot or pro rata (as near as may be) or by any other equitable method determined by the Corporation in its sole discretion. In the event that the Automatic Conversion Date (as defined below in this Section 7(j)) occurs on or prior to April 1, 2008, the Corporation will pay the Make-Whole Dividend Payment on the Automatic Conversion Date.

(i) In case the Corporation shall desire to exercise the right to convert the shares of Convertible Preferred Stock, in whole or in part, pursuant to this Section 7(j), it shall fix a date for the Automatic Conversion (the "Automatic Conversion Date"), and it, or at its request (which must be received by the Transfer Agent at least ten (10) Business Days prior to the date the Transfer Agent is requested to give notice as described below unless a shorter period is agreed to by the Transfer Agent), the Transfer Agent in the name of and at the expense of the Corporation, shall mail or cause to be mailed a notice of such Automatic Conversion (the "Automatic Conversion Notice") at least twenty (20) and not more than thirty (30) days prior to the Automatic Conversion Date to the holders of the shares of Convertible Preferred Stock so to be converted at their last addresses as the same appear on the Corporation's stock records (provided that if the Corporation shall give such Automatic Conversion Notice, it shall also give such Automatic Conversion Notice, and notice of the shares of Convertible Preferred Stock to be converted, to the Transfer Agent). Such mailing shall be by first class mail. The Automatic Conversion Notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such Automatic Conversion Notice by mail or any defect in the notice to the holder of any share of Convertible Preferred Stock designated for conversion shall not affect the validity of the proceedings for the conversion of any other share of Convertible Preferred Stock.

(ii) Each such Automatic Conversion Notice shall specify the number of shares of Convertible Preferred Stock to be converted, the Automatic Conversion Date, the amount of the Make-Whole Dividend Payment, if any, that shall be paid by the Corporation, the portion of such Make-Whole Dividend Payment, if any, that shall be paid in cash, the portion of such Make-Whole Dividend Payment, if any, that shall be paid by delivery of shares of Common Stock, the place or places where the shares of Convertible Preferred Stock to be converted are to be surrendered for conversion and payment of the Make-Whole Dividend Payment, if any, and the Conversion Price then in effect.

(iii) If the Automatic Conversion Notice has been given as above provided, on and after the Automatic Conversion Date (unless the Corporation shall default in the payment of the Make-Whole Dividend Payment, if any), dividends on such shares of Convertible Preferred Stock so converted shall cease to accrue and such shares of Convertible Preferred Stock shall be deemed no longer outstanding and the holders thereof shall have no right in respect of such shares of Convertible Preferred Stock except the right to receive the shares of Common Stock issuable upon conversion of the shares of Convertible Preferred Stock so converted and the Make-Whole Dividend Payment, if any, due on such shares of Convertible Preferred Stock along with any cash in respect of any fractional shares of Common Stock arising from such conversion as provided in

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Section 7(c). On presentation and surrender of the certificate or certificates representing such shares of Convertible Preferred Stock as specified in said Automatic Conversion Notice, the Corporation shall issue and shall deliver a certificate or certificates for the number of full shares of Common Stock issuable upon conversion of the shares of Convertible Preferred Stock so converted and shall pay the Make-Whole Dividend Payment, if any, due on such shares of Convertible Preferred Stock along with any cash in respect of any fractional shares of Common Stock arising from such conversion as provided in Section 7(c) (which payment, if any, shall be paid no later than five (5) Business Days after the presentation and surrender of the certificate or certificates representing such shares of Convertible Preferred Stock so converted). Notwithstanding the failure to present and surrender the certificate or certificates representing the shares of Convertible Preferred Stock as specified in the Automatic Conversion Notice, the effective date of the conversion of any shares subject to any Automatic Conversion that complies with this Section 7 shall be the Automatic Conversion Date.

(iv) Notwithstanding the other provisions of this Section 7(j), in the event that on a proposed Automatic Conversion Date on or after April 1, 2008, the Corporation has not paid full cumulative dividends on the Convertible Preferred Stock (or set aside a sum therefor) for all past Dividend Periods, the Corporation may not convert the Convertible Preferred Stock pursuant to this Section 7(j) and any Automatic Conversion Notice previously given pursuant to this Section 7(j) shall be of no effect.

(v) If any of the foregoing provisions of this Section 7(j) are inconsistent with applicable law at the time of such Automatic Conversion, such law shall govern.

(k) Upon any conversion of the Convertible Preferred Stock (whether pursuant to Section 7(a) or 7(j)) prior to April 1, 2008, the Corporation shall make a payment (the "Make-Whole Dividend Payment") with respect to the shares of Convertible Preferred Stock so converted in an amount equal to full amount of dividends that would have accrued and become payable through and including April 1, 2008 pursuant to Section 3(a) on such shares of Convertible Preferred Stock, less any dividends actually accrued and paid with respect to such shares of Convertible Preferred Stock prior to the date upon which such conversion becomes effective. The Corporation shall calculate the amount of the Make-Whole Dividend Payment. The Corporation may elect to pay the Make-Whole Dividend Payment or any portion thereof (i) in cash or, (ii) by delivering shares of Common Stock. In the event of an Automatic Conversion pursuant to Section 7(j) or a voluntary conversion pursuant to Section 7(a) on or following the date of an Automatic Conversion Notice (unless and until such Automatic Conversion Notice shall be deemed to have no effect), the number of shares to be delivered in the event the Corporation shall elect to make the Make-Whole Dividend Payment (or any portion thereof) in shares of Common Stock shall be equal to (x) the Make-Whole Dividend Payment (or any portion thereof that the Corporation elects to pay in shares of Common Stock) divided by (y) 150% of the Conversion Price (as adjusted pursuant to this Section 7) in effect on the effective date of such conversion. In all other circumstances in which the Corporation is required to make the Make-Whole Dividend Payment and elects to make the Make-Whole Dividend Payment (or any portion thereof) in shares of Common Stock, the number of shares of Common Stock to be delivered shall be equal to the greater of (1) (A) the Make-Whole Dividend Payment (or any

portion thereof that the Corporation elects to pay in shares of Common Stock) divided by (B) 95% of the average of the Closing Price per share of Common Stock for the five consecutive Trading Days immediately preceding and including the last Trading Day prior to the effective date of such conversion; or (2) (A) the Make-Whole Dividend Payment (or any portion thereof that the Corporation elects to pay in shares of Common Stock) divided by (B) \$6.99 All shares of Common Stock which may be issued upon payment of the Make-Whole Dividend Payment (or any portion thereof) will be issued out of the Corporation's authorized but unissued Common Stock and will, upon issue, be duly and validly issued and fully paid and nonassessable and free of any preemptive or similar rights.

(l) The following definitions shall apply to terms used in this Section 7:

(i) "Applicable Price" shall mean (i) in the event of a Non-Stock Fundamental Change in which the holders of Common Stock receive only cash, the amount of cash received by a holder of one share of Common Stock and (ii) in the event of any other Fundamental Change, the average of the daily Closing Price for one share of Common Stock during the 10 Trading Days immediately prior to the record date for the determination of the holders of Common Stock entitled to receive cash, securities, property or other assets in connection with such Fundamental Change or, if there is no such record date, prior to the date upon which the holders of Common Stock shall have the right to receive such cash, securities, property or other assets. The Closing Price on any Trading Day may be subject to adjustment as provided in Section 7(l)(ii).

(ii) "Closing Price" with respect to any securities on any day shall mean the closing sale price regular way on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in each case on the Nasdaq National Market or New York Stock Exchange, as applicable, or, if such security is not listed or admitted to trading on such Nasdaq National Market or New York Stock Exchange, on the principal national security exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the closing bid and asked prices of such security on the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similar generally accepted reporting service, or if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose, or a price determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution.

(iii) "Common Stock Fundamental Change" shall mean any Fundamental Change in which more than 50% of the value (as determined in good faith by the Board of Directors of the Corporation) of the consideration received by holders of Common Stock consists of common stock that, for the 10 Trading Days immediately prior to such Fundamental Change, has been admitted for listing or admitted for listing subject to notice of issuance on a national securities exchange or quoted on Nasdaq National Market, provided, however, that a Fundamental Change shall not be a Common Stock Fundamental Change unless either (i) the Corporation continues to exist after the

occurrence of such Fundamental Change and the outstanding Convertible Preferred Stock continues to exist as outstanding Convertible Preferred Stock, or (ii) not later than the occurrence of such Fundamental Change, the outstanding Convertible Preferred Stock is converted into or exchanged for shares of convertible preferred stock, which convertible preferred stock has powers, preferences and relative, participating optional or other rights, and qualifications, limitations and restrictions substantially similar (but no less favorable) to those of the Convertible Preferred Stock.

(iv) "Current Market Price" shall mean the lesser of (a) the Closing Price per share of Common Stock on the date in question and (b) the average of the daily Closing Prices per share of Common Stock for the ten (10) consecutive Trading Days immediately prior to the date in question; provided, however, that (1) if the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution or Fundamental Change requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 7(d)(i), (ii), (iii), (iv), (v), (vi), or (vii) occurs during such ten (10) consecutive Trading Days, the Closing Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event, (2) if the "ex" date for any event (other than the issuance or distribution or Fundamental Change requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 7(d)(i), (ii), (iii), (iv), (v), (vi), or (vii) occurs on or after the "ex" date for the issuance or distribution or Fundamental Change requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event, and (3) if the "ex" date for the issuance, distribution or Fundamental Change requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (1) or (2) of this proviso, the Closing Price for each Trading Day on or after such "ex" date shall be adjusted by adding thereto the amount of any cash and the fair market value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 7(d)(iv), (vi) or (vii) whose determination shall be conclusive and described in a Board Resolution) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such "ex" date.

For purposes of any computation under Sections 7(d)(vi) or (vii), the Current Market Price of the Common Stock on any date shall be deemed to be the average of the daily Closing Prices per share of Common Stock for such day and the next two succeeding Trading Days; provided, however, that if the "ex" date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 7(d)(i), (ii), (iii), (iv), (v), (vi), or (vii) occurs on or after the Expiration Time or the Tender Expiration Time, as the case may be, for the tender or exchange offer requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the

Conversion Price is so required to be adjusted as a result of such other event. For purposes of this paragraph, the term "ex" date, (1) when used with respect to any issuance or distribution or Fundamental Change, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution, (2) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and (3) when used with respect to any tender or exchange offer means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time or Tender Expiration Time, as the case may be, of such offer. Notwithstanding the foregoing, whenever successive adjustments to the Conversion Price are called for pursuant to Section 7(d), such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of Section 7(d) and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

(v) "fair market value" shall mean the amount which a willing buyer would pay a willing seller in an arm's length transaction.

(vi) "Fundamental Change" shall mean the occurrence of any transaction or event or series of transactions or events pursuant to which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or shall constitute solely the right to receive cash, securities, property or other assets (whether by of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise); provided, however, in the case of any such series of transactions or events, for purposes of adjustment of the Conversion Price, such Fundamental Change shall be deemed to have occurred when substantially all of the Common Stock shall have been exchanged for, converted into or acquired for, or shall constitute solely the right to receive, such cash, securities, property or other assets, but the adjustment shall be based upon the consideration that the holders of the Common Stock received in the transaction or event as a result of which more than 50% of the Common Stock shall have been exchanged for, converted into or acquired for, or shall constitute solely the right to receive, such cash, securities, property or other assets.

(vii) "Non-Stock Fundamental Change" shall mean any Fundamental Change other than a Common Stock Fundamental Change.

(viii) "Purchaser Stock Price" shall mean, with respect to any Common Stock Fundamental Change, the average of the daily Closing Price for one share of the common stock received by holders of the Common Stock in such Common Stock Fundamental Change during the 10 Trading Days immediately prior to the date fixed for the determination of the holders of the Common Stock entitled to receive such common stock or, if there is no such date, prior to the date upon which the holders of the Common Stock shall have the right to receive such common stock.

(ix) "Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(x) "Trading Day" shall mean (x) if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made thereon or (y) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national security exchange, a day on which the New York Stock Exchange or another national security exchange is open for business or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(8) **Ranking.** Any class or classes of stock of the Corporation shall be deemed to rank:

(a) prior to the Convertible Preferred Stock, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, if the holders of such class shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of Convertible Preferred Stock.

(b) on a parity with the Convertible Preferred Stock, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, Dividend Payment Dates or redemption or liquidation prices per share thereof be different from those of the Convertible Preferred Stock, if the holders of such class of stock and the Convertible Preferred Stock shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation prices, without preference or priority of one over the other; and

(c) junior to the Convertible Preferred Stock, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holder of Convertible Preferred Stock shall be entitled to receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of shares of such stock. The Junior Participating Preferred Stock of the Corporation shall be deemed to be junior to the Convertible Preferred Stock.

(9) **Voting Rights.**

(a) The holders of the Convertible Preferred Stock will not have any voting rights except as set forth below or as otherwise from time to time required by law. In connection with any right to vote, each holder of the Convertible Preferred Stock will have one vote for each share of Convertible Preferred Stock held. Any shares of Convertible Preferred Stock held by the

Corporation or any entity controlled by the Corporation shall not have voting rights hereunder and shall not be counted in determining the presence of a quorum.

(b) Whenever dividends on the Convertible Preferred Stock or on any outstanding shares of preferred stock ranking on parity as to dividends with the Convertible Preferred Stock shall be in arrears in an aggregate amount equal to at least six quarterly dividends (whether or not consecutive), (i) the number of members of the Board of Directors of the Corporation shall be increased by two, effective as of the time of election of such directors as hereinafter provided and (ii) the holders of the Convertible Preferred Stock (voting separately as a class with the holders of preferred stock ranking on parity as to dividends with the Convertible Preferred Stock on which like voting rights have been conferred and are exercisable, without regard to series) will have the exclusive right to vote for and elect such two additional directors of the Corporation at any meeting of stockholders of the Corporation at which directors are to be elected held during the period such dividends remain in arrears. The right of the holders of the Convertible Preferred Stock to vote for such two additional directors shall terminate when all accrued and unpaid dividends on the Convertible Preferred Stock and all other affected classes or series of preferred stock ranking on parity as to dividends with the Convertible Preferred Stock have been declared and paid or set apart for payment. The holders of the Convertible Preferred Stock voting as a class shall have the right to remove without cause at any time and replace any directors such holders shall have elected pursuant to this Section 9. If the office of any director elected by the holders of Convertible Preferred Stock voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by the holders of Convertible Preferred Stock (together with any other series of preferred stock ranking on a parity with the Convertible Preferred Stock and upon which like voting rights have been conferred and are exercisable) voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. The term of office of all directors so elected shall terminate immediately upon the termination of the right of the holders of the Convertible Preferred Stock to vote for such directors, and the number of directors of the Board of Directors of the Corporation shall immediately thereafter be reduced by two. The Board of Directors of the Corporation shall determine, when and if required, to which class of directors such directors appointed by the holders of the Convertible Preferred Stock shall be appointed under the Corporation's Articles of Incorporation; provided, however, that if applicable, the term of such directors shall terminate earlier than the expiration of the terms provided for the applicable class or classes of directors if the right of the holders of Convertible Preferred Stock to appoint directors under this Section 9 terminates as provided herein.

The foregoing right of the holders of the Convertible Preferred Stock with respect to the election of two directors may be exercised at any annual meeting of stockholders or at any special meeting of stockholders held for such purpose. If the right to elect directors shall have accrued to the holders of the Convertible Preferred Stock more than ninety (90) days preceding the date established for the next annual meeting of stockholders, the President of the Corporation shall, within twenty (20) days after the delivery to the Corporation at its principal office of a written request for a special meeting signed by the holders of at least 10% of all outstanding shares of Convertible Preferred Stock, call a special meeting of the holders of the Convertible



Preferred Stock to be held within sixty (60) days after the delivery of such request for the purpose of electing such additional directors.

(c) So long as the Convertible Preferred Stock is outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least a majority (or two-thirds if the Convertible Preferred Stock is then listed on the New York Stock Exchange, unless, in either case, a higher percentage shall then be required by applicable law) of all outstanding shares of Convertible Preferred Stock voting separately as a class with the holders of preferred stock ranking on parity as to dividends with the Convertible Preferred Stock on which like voting rights have been conferred and are exercisable, without regard to series, (i) amend, alter or repeal any provision of the Articles of Incorporation or the Bylaws of the Corporation so as to affect adversely the relative rights, preferences, qualifications, limitations or restrictions of the Convertible Preferred Stock, or (ii) create, authorize or issue, or reclassify any authorized stock of the Corporation into, or increase the authorized amount of, any class or series of the Corporation's capital stock ranking senior to the Convertible Preferred Stock as to dividends or as to distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or any obligation or security convertible into shares of such a class or series. In addition, so long as the Convertible Preferred Stock is outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least a majority (unless a higher percentage shall then be required by applicable law) of all outstanding shares of Convertible Preferred Stock voting separately as a class with the holders of preferred stock ranking on parity as to dividends with the Convertible Preferred Stock on which like voting rights have been conferred and are exercisable, without regard to series, enter into a share exchange pursuant to which the Convertible Preferred Stock would be exchanged for any other securities or merge or consolidate with or into any other person or permit any other person to merge or consolidate with or into the Corporation, unless in such case each share of Convertible Preferred Stock shall remain outstanding or unaffected or shall be converted into or exchanged for convertible preferred stock of the surviving entity having voting rights, preferences, limitations or special rights thereof substantially similar (but no less favorable) to a share of Convertible Preferred Stock. A class vote on the part of the Convertible Preferred Stock shall, without limitation, specifically not be deemed to be required (except as otherwise required by law or resolution of the Corporation's Board of Directors) in connection with (a) the authorization, issuance or increase in the authorized amount of any shares of capital stock ranking junior to or on parity with the Convertible Preferred Stock both as to the payment of dividends and as to distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, when and if issued, including Common Stock; or (b) the authorization, issuance or increase in the amount of any bonds, mortgages, debentures or other obligations of the Corporation (other than those that may be covered by clause (ii) of the preceding sentence).

(10) **[Intentionally Omitted.]**

(11) **Record Holders.** The Corporation and the Transfer Agent may deem and treat the record holder of any shares of Convertible Preferred Stock as the true and lawful owner thereof for all purposes and neither the Corporation nor the Transfer Agent shall be affected by any notice to the contrary.

(12) **Notice.** Except as may otherwise be provided for herein, all notices referred to herein shall be in writing, and all notices hereunder shall be deemed to have been given upon receipt, in the case of a notice of conversion given to the Corporation as contemplated in Section 7(b) hereof, or, in all other cases, upon the earlier of receipt of such notice or three Business Days after the mailing of such notice if sent by registered mail (unless first-class mail shall be specifically permitted for such notice under the terms of this resolution) with postage prepaid, addressed, if to the Corporation, to its offices at 1655 Roberts Boulevard NW, Suite 142, Kennesaw, GA, 30144 (Attention: President) or to an agent of the Corporation designated as permitted by this certificate, or, if to any holder of the Convertible Preferred Stock, to such holder at the address of such holder of the Convertible Preferred Stock as listed in the Corporation's stock records or to such other address as the Corporation or holder, as the case may be, shall have designated by notice similarly given.

(13) **Form of Certificates; Transfer.**

(a) So long as the shares of Convertible Preferred Stock are eligible for book-entry settlement with the Depository, or unless otherwise required by law, all shares of Convertible Preferred Stock that are so eligible may be represented by a Convertible Preferred Stock certificate in global form (the "Global Certificate") registered in the name of the Depository or the nominee of the Depository, except as otherwise specified below. The transfer, conversion and exchange of beneficial interests in the Global Certificate shall be effected through the Depository in accordance with these Articles and the procedures of the Depository therefor.

Transfers of interests in a Global Certificate will be made in accordance with the standing instructions and procedures of the Depository and its participants. The Transfer Agent shall make appropriate endorsements to reflect increases or decreases in the Global Certificate as set forth on the face of the Global Certificate to reflect any such transfers.

Except as provided below, beneficial owners of an interest in a Global Certificate shall not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form and will not be considered holders of such Global Certificates.

No definitive Convertible Preferred Stock certificate, or portion thereof, in respect of which the Corporation or an Affiliate of the Corporation held any beneficial interest shall be included in a Global Certificate. The Transfer Agent shall issue Convertible Preferred Stock certificates in definitive form upon any transfer of a beneficial interest in any Global Certificate to the Corporation or any Affiliate of the Corporation.

(b) Any Global Certificate may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of these Articles as may be required by the Custodian, the Depository, by the New York Stock Exchange or by the National Association of Securities Dealers, Inc. in order to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange upon which the shares of Convertible Preferred Stock may be listed or traded or to conform with any

usage with respect thereto, or to indicate any special limitations or restrictions to which any particular shares of Convertible Preferred Stock are subject.

(c) Notwithstanding any other provisions of this Certificate (other than the provisions set forth in this Section 13(c)), a Global Certificate may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee to a successor Depository or a nominee of such successor Depository.

The Depository shall be a clearing agency registered under the Exchange Act. The Corporation initially appoints The Depository Trust Company to act as Depository with respect to the Global Certificates. Initially, the Global Certificate shall be issued to the Depository, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with a custodian for Cede & Co.

If at any time the Depository for a Global Certificate notifies the Corporation that it is unwilling or unable to continue as Depository for such Global Certificate, the Corporation may appoint a successor Depository with respect to such Global Certificate. If a successor Depository for the Convertible Preferred Stock is not appointed by the Corporation within 90 days after the Corporation receives such notice, the Corporation will execute, and the Transfer Agent will authenticate and deliver, Convertible Preferred Stock in certificated form, in an aggregate principal amount equal to the principal amount of the Global Certificate, in exchange for such Global Certificate.

Convertible Preferred Stock in definitive form issued in exchange for all or a part of a Global Certificate pursuant to this Section 13 shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Transfer Agent. Upon execution and authentication, the Transfer Agent shall deliver such Convertible Preferred Stock in certificated form to the persons in whose names such Convertible Preferred Stock in definitive form are so registered.

At such time as all interests in a Global Certificate have been redeemed, converted, exchanged, repurchased or canceled for Convertible Preferred Stock in definitive form, or transferred to a transferee who receives Convertible Preferred Stock in definitive form, such Global Certificate shall be, upon receipt thereof, canceled by the Transfer Agent in accordance with standing procedures and instructions existing between the Custodian and Depository. At any time prior to such cancellation, if any interest in a Global Certificate is exchanged for Convertible Preferred Stock in certificated form, redeemed, converted, exchanged, repurchased by the Corporation or canceled, or transferred for part of a Global Certificate, the principal amount of such Global Certificate shall, in accordance with the standing procedures and instructions existing between the Custodian and the Depository, be reduced or increased, as the case may be, and an endorsement shall be made on such Global Certificate, by the Transfer Agent or the Custodian, at the direction of the Transfer Agent, to reflect such reduction or increase.

(d) Any Convertible Preferred Stock or Common Stock issued upon the conversion or exchange of a Security that is purchased or owned by the Corporation or any Affiliate thereof may not be resold by the Corporation or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction which results in such Convertible Preferred Stock or Common Stock, as the case may be, no longer being "restricted securities" (as defined under Rule 144). Any Convertible Preferred Stock or Common Stock issued in definitive form to the Corporation or any Affiliate thereof shall be endorsed with or have incorporated in the text thereof such legends or recitals as necessary to set forth the foregoing restrictions.

**(14) Form of Notice of Conversion; Form of Assignment.**

(a) The following is the form of Conversion Notice to be set forth on the reverse of the Convertible Preferred Stock certificate:

[FORM OF CONVERSION NOTICE]

CONVERSION NOTICE

To: \_\_\_\_\_

The undersigned registered owner of the Convertible Preferred Stock hereby irrevocably exercises the option to convert the Convertible Preferred Stock, or the portion hereof below designated, into shares of Common Stock in accordance with the terms of the Articles of Incorporation, and directs that the shares issuable and deliverable upon such conversion, together with any shares issuable and deliverable or check in payment of any Make-Whole Dividend Payment, if any, and any check in payment for fractional shares and any Convertible Preferred Stock representing any unconverted amount of shares hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If shares or any portion of the Convertible Preferred Stock not converted are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Dated: \_\_\_\_\_

\_\_\_\_\_

Signature(s)

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee

medallion program pursuant to Securities and Exchange Commission Rule 17AD-15 if shares of Common Stock are to be issued, or Convertible Preferred Stock to be delivered, other than to and in the name of the registered holder.

**Signature Guarantee**

Fill in for registration of shares if to be issued, and Convertible Preferred Stock if to be delivered, other than to and in the name of the registered holder:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State and Zip Code)  
Please print name and address

Number of shares to be converted (if less than all):

\_\_\_\_\_

\_\_\_\_\_  
Taxpayer

Social Security or Other Identification Number

\_\_\_\_\_

(b) The following is the form of Assignment to be set forth on the reverse of the Convertible Preferred Stock certificate:

[FORM OF ASSIGNMENT]

For value received \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ (Please insert social security or Taxpayer Identification Number of assignee) the Convertible Preferred Stock, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the said Convertible Preferred Stock on the books of the Corporation, with full power of substitution in the premises.

Unless the appropriate box below is checked, the undersigned confirms that such Convertible Preferred Stock is not being transferred to the Corporation or an "affiliate" of the Corporation as defined in Rule 144 under the Securities Act of 1933, as amended (an "Affiliate").

- The transferee is an Affiliate of the Corporation
- The transferee is the Corporation

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature(s)

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17AD-15 if shares of Common Stock are to be issued, or Convertible Preferred Stock to be delivered, other than to and in the name of the registered holder.

Signature Guarantee


NOTICE: The signature on the conversion notice, or the assignment must correspond with the name as written upon the face of the Convertible Preferred Stock in every particular without alteration or enlargement or any change whatever.

\_\_\_\_\_  
3. This amendment of the Articles of Incorporation is permitted by Section 607.0602 without shareholder approval.

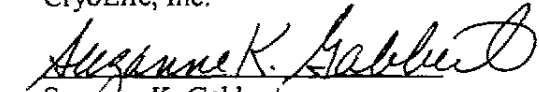
4. The amendment of the Articles of Incorporation does not adversely affect the rights or preferences of the holders of outstanding shares of any class or series of stock and does not result in the percentage of authorized shares that remain unissued after the designation exceeding the percentage of authorized shares that were unissued before the designation.

5. The effective date of these Articles of Amendment is March 15, 2005

**IN WITNESS WHEREOF**, the foregoing Articles of Amendment are executed by the President, STEVEN G. ANDERSON and attested by SUZANNE K. GABBERT, as Secretary of CryoLife, on the 15th day of March, 2005.



Steven G. Anderson  
President and CEO  
CryoLife, Inc.



Suzanne K. Gabbert  
Secretary  
CryoLife, Inc.