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AMEND
02/22/10
19



INSTITUTIONAL DEPOSITS CORP. ®

February 16, 2010

Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Re: Amended and Restated Articles of Incorporation
For Institutional Deposits Corp. – Document # P00000050170

Dear Sir or Madam:

Enclosed please find *Amended and Restated Articles of Incorporation* for Institutional Deposits Corp., together with a check in the amount of \$43.75 as payment of the fee for filing of the Amendment, and return of a Certified Copy of the Amended Articles.

Please return all correspondence concerning this matter to the following:

William R. Burdette
Institutional Deposits Corp.
2103 Coral Way, Suite 202
Miami, FL 33145
wrb@IDCdeposits.com

For further information concerning this matter, please call me at (305) 856-4228.

Sincerely,

William R. Burdette

RECEIVED
2010 FEB 19 AM 8:00

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

CALLED +
SPOKE WITH MR. BURDETTE'S SEC.
DATE OF ADOPTION IS 2/16/10
IN FUTURE WILL ADD IT TO
MAKE IT CLEAR.

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
INSTITUTIONAL DEPOSITS CORP.**

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TALLAHASSEE, FLORIDA

ARTICLE I. NAME

The name of the Corporation shall be Institutional Deposits Corp.

ARTICLE II. NATURE OF BUSINESS

This corporation may engage or transact in any or all lawful activities or business permitted under the laws of the United States, the State of Florida or any other state, country, territory or nation. It will be the intention and purpose of the Corporation, but without creating any legally binding obligations to any person, to operate the business in a socially responsible manner by developing and delivering its products or services for customers in ways which nurture and support humanity, including business practices which reflect the Corporation's desire to operate the business in alignment with the following chosen values:

1. Respect and care for our employees and their roles in the Corporation and in life in general, both as employees and as fathers or mothers, sons or daughters, friends or partners of others in life and as member of the communities in which they live and work, creating an environment in which the employees enjoy coming to work and feel inspired and enabled in their own personal growth.
2. Respect for our customers and vendors, always dealing with them fairly and honestly, so they feel our authentic interest in their welfare as well as our own.
3. Respect for the environment, doing business in ways that support and maintain a healthy and sustainable relationship between the Corporation and the environment that we affect, both locally and globally.
4. Respect for the community in which we do business, finding ways to give something back to them in order to express our gratitude for their contribution to us and the lives of our customers, employees and vendors.
5. Respect for our stockholders, creating long term value for them in gratitude for their contributions to our success and growth.

This statement of values is expressed in order to set forth high goals for ourselves and to describe a core foundation around which a natural self-organizing and evolving process can occur for the Corporation, subject, however to the condition and limitation that it is not intended and shall not be construed at any time as the basis for any demand or legal actions by anyone who believes that we have not met those goals.

ARTICLE III. CAPITAL STOCK

The total number of shares of all classes, which the Corporation is authorized to issue, is Twenty Million (20,000,000) shares, consisting of:

1. Fifteen Million (15,000,000) shares of common stock, \$0.001 par value per share ("Common Stock"); and

2. Five Million (5,000,000) shares of preferred stock, \$0.001 par value per share ("Preferred Stock").

Except as otherwise restricted by these Articles of Incorporation, the Corporation is authorized to issue from time to time all or any portion of the capital stock of the Corporation that is authorized but not issued to such person or persons and for such lawful consideration as it may deem appropriate, and generally in its absolute discretion to determine the terms and manner of any disposition of such authorized but unissued capital stock.

Any and all such shares issued for which the full consideration has been paid or delivered shall be deemed fully paid shares of capital stock, and the holder of such shares shall not be liable for any further call or assessment or any other payment thereon.

The voting powers, designations, preferences, privileges and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions of each class of capital stock of the Corporation shall be as hereafter provided in Article III.

A. PREFERRED STOCK.

1. General. The Preferred Stock may be issued in one or more series at such time or times and for such consideration or considerations as the Corporation's Board of Directors may determine. Each series of Preferred Stock shall be so designated as to distinguish the shares thereof from the shares of all other series and classes.

2. Designation, Voting Powers, Preferences, etc. Authorized and unissued shares of Preferred Stock may be issued with such designations, voting powers (or no voting powers), preferences and relative, participating, optional or other special rights, and qualifications, limitations and restrictions on such rights, as the Board of Directors may authorize by resolutions duly adopted prior to the issuance of any shares of any series of Preferred Stock, including, but not limited to: (i) the distinctive designation of each series and the number of shares that will constitute such series; (ii) the voting rights, if any, of shares of such series and whether the shares of any such series having voting rights shall have multiple or fractional votes per share; (iii) the dividend rate on the shares of such series, any restriction, limitation, or condition upon the payment of such dividends, whether dividends shall be cumulative, and the dates on which dividends are payable; (iv) the prices at which, and the terms and conditions on which, the shares of such series may be redeemed, if such shares are redeemable; (v) the purchase or sinking fund provisions, if any, for the purchase or redemption of shares of such series; (vi) any preferential amount payable upon shares of such series in the event of the liquidation, dissolution, or winding-up of the Corporation, or the distribution of its assets; (vii) the prices or rates of conversion at which, and the terms and conditions on which, the shares are convertible; and (viii) such other preferences, powers, qualifications, rights and privileges, all as the Board of Directors may deem advisable and as are not inconsistent with law and the provisions of this Articles of Incorporation.

B. COMMON STOCK

1. General. The rights of the holders of the Common Stock with respect to dividends and upon the liquidation, dissolution and winding up of the Corporation's affairs, are subject to and qualified by the rights of the holders of Preferred Stock as specified herein and any other class of the Corporation's

Capital Securities that may hereafter be issued and outstanding having rights upon the occurrence of a Liquidation Event senior to or *pari passu* with the rights of holders of Common Stock. Each share of Common Stock shall be treated identically as all other shares of Common Stock with respect to dividends, distributions, rights in liquidation and in all other respect.

2. Voting. Each holder of shares of Common Stock is entitled to one vote for each share thereof held by such holder at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding shares of Preferred Stock, and any other classes or series of the Corporation's Capital Stock that may hereafter be authorized and issued having preferred dividend rights senior to or *pari passu* with the rights of holders of Common Stock.

4. Liquidation. Upon the occurrence of a Liquidation Event, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to the rights and preferences of any then outstanding shares of Preferred Stock and any other classes or series of the Corporation's Capital Securities that are issued and outstanding having rights upon the occurrence of a Liquidation Event senior to or *pari passu* with the rights of holders of Common Stock.

5. Increasing Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding plus the number of shares of Common Stock necessary to allow for the conversion or exercise of all convertible or exercisable securities of the Corporation then outstanding) by an affirmative vote of the holders of a majority of the voting stock of the Corporation voting together as one class.

C. SERIES A PREFERRED STOCK. The Corporation is authorized to issue up to Two Million (2,000,000) shares of Preferred Stock as "Series A Preferred Stock," which shall have the designations, voting powers, preferences and relative, participating, optional and other special rights and qualifications, limitations and restrictions on such rights as follows:

1. Dividends.

a. The holders of shares of Series A Preferred Stock, in preference to the holders of all Junior Securities, shall be entitled to receive, when and if declared by the Board of Directors out of funds legally available for the purpose, cumulative dividends as provided in this Section C.1. Cumulative dividends on each share of Series A Preferred Stock shall be payable in cash and shall accrue at the per annum rate of eight percent (8%) through March 2, 2010 and thereafter at the per annum rate of either (x) eight percent (8%) for shareholders who choose at any time to convert their Series A Preferred Stock to common stock, or (y) fifteen percent (15%) for shareholders who do not choose to convert their Series A Preferred Stock to common stock in order to receive the higher dividend rate, in all cases calculated on the sum of (i) the Series A Purchase Price and (ii) all accumulated and unpaid dividends accrued thereon pursuant to this Section C.1(a) from the date of issuance thereof (the "Series A Preferred Dividends" and, the sum of the Series A Preferred Dividends and the Series A Purchase Price is referred to herein as the "Series A Liquidation Preference"). Series A Preferred Dividends shall be calculated and compounded annually in arrears on December 31 of each year, prorated on a daily basis for partial periods; *provided that*, in lieu of payment in cash or such compounding, the Corporation may issue to each Holder of Series A Preferred Stock additional shares (the "Dividend Shares") of Series A Preferred

Stock in an amount equal to (x) the Series A Preferred Dividend due to such Holder, divided by (y) the Conversion Price then in effect plus a Warrant to purchase that number of shares of Common Stock equal to eighty percent (80%) of the number of Dividend Shares issued or in the case of shares of Series A Preferred Stock that were originally issued with a related Warrant to purchase that number of shares of Common Stock equal to twenty percent (20%) of the number of shares of Series A Preferred Stock originally issued, a Warrant to purchase that number of shares of Common Stock equal to twenty percent (20%) of the number of Dividend Shares issued; such issuance to be effective as of January 1 following the December 31 such dividend was due to be paid, regardless of when the certificate is issued. Series A Preferred Dividends shall commence to accrue on each share of Series A Preferred Stock from the date of issuance thereof and continue to accrue thereafter until the Series A Liquidation Preference with respect to such share is paid in full in cash, whether or not such dividends are declared by the Board of Directors and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series A Preferred Stock, such payment shall be distributed ratably among the holders of Series A Preferred Stock based upon the aggregate accrued but unpaid dividends on the Series A Preferred Stock held by each holder.

b. The holders of Series A Preferred Stock shall, in addition to the Series A Preferred Dividends, participate in all dividends and other distributions (other than stock dividends in the nature of a stock split or the like and repurchases of securities by the Corporation not made on a *pro rata* basis from all holders of any class of the Corporation's Capital Securities) that are declared and paid on Common Stock on the same basis as if each share of Series A Preferred Stock had been converted into Common Stock in accordance with Section C.3 immediately prior to the record date established for such dividends; *provided, however*, that the holders of Series A Preferred Stock shall not be entitled to participate in dividends in accordance with this Section C.1(b) unless at the time such dividend is declared and paid the Corporation shall have theretofore declared and paid dividends on each share of Common Stock outstanding at such time in an aggregate amount equal to the aggregate amount per share of the Series A Preferred Dividends theretofore declared and paid to the holders of shares of Series A Preferred Stock.

c. Without the consent of the Requisite Series A Stockholders, so long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not declare, pay or set apart for payment any dividends or make any other distribution on or redeem any Junior Securities or other class or series of the Corporation's Capital Securities (other than stock dividends and distributions in the nature of a stock split or the like) and will not permit any Subsidiary to redeem, purchase or otherwise acquire for value, or set apart for any sinking or other analogous fund for the redemption or purchase of, any Junior Securities; *provided, however*, that (i) the Corporation may purchase, redeem or acquire shares of Common Stock and Convertible Securities issued to directors and employees of, and consultants to, the Corporation pursuant to equity incentive plans upon termination of employment or in accordance with other arrangements approved by the Board of Directors (with the approval of the Series A Director Designee) or as otherwise approved by the Requisite Series A and Series C Stockholders, and (ii) the Corporation may redeem the Series B Preferred Stock if permitted by Article III.D.4 below.

d. All numbers relating to the calculation of dividends pursuant to this Section A.1 shall be equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving Series A Preferred Stock or Common Stock.

2. Liquidation Preference.

a. Upon (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, (ii) a Sale of the Corporation or (iii) a reorganization of the Corporation required by any court or administrative body in order to comply with any provision of law (each of the events referred to in clauses (i), (ii) and (iii) being referred to as a "Liquidation Event"), each holder of Series C Preferred Stock as defined below shall be entitled, after provision for the payment of the Corporation's debts and other liabilities and in preference to, and, before any amount or property shall be paid or distributed on account of any Junior Securities or any other class or series of the Corporation's Capital Securities, to be paid in full with respect to each share of Series C Preferred Stock out of the assets of the Corporation available for distribution to stockholders, which assets shall be cash, and thereafter, to the extent thereof, first with securities traded on a national securities exchange or nationally recognized interdealer quotation system, and thereafter securities traded over-the-counter or securities with no active public market (with the value thereof determined in accordance with Article III, Section C.2(d)) in an amount equal to the Series C Liquidation Preference. If upon any Liquidation Event the amount available for distribution among the holders of all outstanding Series C Preferred Stock is insufficient to permit the payment of the Series C Liquidation Preference of each share of Series C Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Series C Preferred Stock ratably in proportion to the relative Series C Liquidation Preferences of the Series C Preferred Stock held by such holders; and the holders of Series A Preferred Stock, Series B Preferred Stock, Common Stock, and of any other Junior Securities shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof. Upon any Liquidation Event, after the holders of Series C Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Series C Preferred Stock as provided above in this Section C.2(a), the remaining net assets of the Corporation shall be distributed first to the holders of Series A Preferred Stock in an amount equal to the Series A Liquidation Preference. If upon any Liquidation Event the amount available for distribution among the holders of all outstanding Series A Preferred Stock is insufficient to permit the payment of the Series A Liquidation Preference of each share of Series A Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Series A Preferred Stock ratably in proportion to the relative Series A Liquidation Preferences of the Series A Preferred Stock held by such holders; and the holders of Series B Preferred Stock, Common Stock and of any other Junior Securities shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof. Upon any Liquidation Event, after the holders of Series C Preferred Stock and Series A Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Preferred Stock as provided above in this Section C.2(a), the remaining net assets of the Corporation shall be distributed first to the holders of the Series B Preferred Stock as provided in Section D of this Article III, and thereafter ratably among the holders of Series A Preferred Stock, the holders of Series C Preferred Stock, and Common Stock (with each share of Series A Preferred Stock and Series C preferred Stock, being deemed for such purpose to equal the number of shares of Common Stock, including fractions thereof, into which such share Preferred Stock is convertible in accordance with the provisions of Section C.3 and Section E.3 hereof).

b. Consolidation, Merger, etc.

(i) Notwithstanding Section C.2(a), neither a Sale of the Corporation nor any reorganization of the Corporation of the type referenced in clause (iii) of Section C.2(a) shall be deemed to be a Liquidation Event for the purposes of this Section C.2 if the Requisite Series A Stockholders and the Requisite Series C Stockholders waive, in writing, the provisions of this Section C.2 with respect to such event.

(ii) The affirmative vote of the Requisite Series A Stockholders, acting by written consent or voting separately as single class in person or by proxy at an annual meeting or special meeting called for the purpose, shall be necessary to authorize the Corporation to enter into or effect any Sale of the Corporation unless immediately upon giving effect thereto the Series A Liquidation Preference with respect to each outstanding share of Series A Preferred Stock, calculated through the date such Sale of the Corporation is consummated, is paid in full as provided in Section C.2(a).

c. No Effect on Conversion Rights. The provisions of this Section C.2 shall not in any way limit the right of the holders of Series A Preferred Stock to elect to convert their shares of Series A Preferred Stock into shares of Common Stock in accordance with Section C.3 hereof prior to or in connection with any Liquidation Event.

d. Valuation of Distribution Securities. Any securities or other consideration to be delivered to the holders of Series A Preferred Stock upon any Liquidation Event in accordance with the terms hereof shall be valued as follows:

(i) If the consideration consists of cash or cash equivalents, then the value shall be computed at the aggregate amount of the cash or cash equivalents so delivered;

(ii) The per share value of securities traded on a national securities exchange or a nationally recognized interdealer quotation system shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 15-day period ending three (3) Business Days prior to the closing of such Liquidation Event;

(iii) The per share value of securities traded over-the-counter shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) Business Days prior to the closing of such Liquidation Event; and

(iv) For all other consideration, the value shall be the fair market value thereof as mutually determined by the Corporation and the Requisite Series A Stockholders; provided that if the Corporation and the Requisite Series A Stockholders are unable to reach agreement, then by independent appraisal made by an investment bank hired and paid by the Corporation, such investment banker to be reasonably acceptable to the Requisite Series A Stockholders.

3. Conversion into Common Stock. The holders of Series A Preferred Stock shall have the following conversion rights:

a. Voluntary Conversion. At any time, each holder of Series A Preferred Stock shall be entitled, without the payment of any additional consideration, to cause all or any portion of the shares of Series A Preferred Stock held by such holder to be converted into the number of shares of fully paid and nonassessable Common Stock determined by dividing (i) the number of shares of Series A Preferred Stock being converted, divided by (ii) the Series A Preferred Stock Conversion Price then in effect.

b. Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted, without the payment of any additional consideration, into the number of shares of Common Stock provided for in Section C.3(a) immediately upon (i) the consummation of the Corporation's first underwritten Public Offering (A) resulting in at least \$10 Million of proceeds to the Corporation, net of underwriting discounts and commissions and offering expenses, and (B) after giving effect to which the Corporation's Common Stock is listed on a U.S. national securities exchange or

admitted for quotation on the Nasdaq National Market or a successor thereto (a "Qualified Public Offering"); *provided* that if a Qualified Public Offering is consummated, all outstanding shares of Series A Preferred Stock shall be deemed to have been converted into shares of Common Stock as provided in this Section A.3 immediately prior to such consummation.

c. Procedure for Voluntary Conversion: Effective Date. Upon the election to convert the Series A Preferred Stock made in accordance with Section C.3(a), the holders of the Series A Preferred Stock making such election shall provide written notice of such conversion (the "Voluntary Conversion Notice") to the Corporation setting forth the number of shares of Series A Preferred Stock each such holder elects to convert into Common Stock (the "Elected Preferred Stock"). On the date the Voluntary Conversion Notice is delivered to the Corporation, such shares of Elected Preferred Stock shall thereupon be converted, without further action, into the number of shares of Common Stock provided for in Section C.3(a), and such number of shares of Common Stock into which the Elected Preferred Stock is converted shall thereupon be deemed to have been issued to such holders of the Elected Preferred Stock. Such holders shall as soon as practicable thereafter surrender to the Corporation at the Corporation's principal executive office the certificate or certificates evidencing the Elected Preferred Stock, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or an Affidavit of Loss with respect thereto. Upon surrender of such certificates or delivery of an Affidavit of Loss with respect thereto, the Corporation shall issue and deliver to the holder so surrendering such certificates or to such holder's designee, at an address designated by such holder, certificates for the number of shares of Common Stock into which such holder's Elected Preferred Stock shall have been converted. The issuance of certificates for shares of Common Stock upon conversion of Elected Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such stock. Notwithstanding anything to the contrary set forth in this Section C.3(c), in the event that the holders of shares of Series A Preferred Stock elect to convert such shares pursuant to Section C.3(a) in connection with any Liquidation Event, Public Offering or other specified event, (i) such conversion may at the election of such holders be conditioned upon the consummation of such Liquidation Event, Public Offering or the occurrence of such other specified event, in which case, such conversion shall not be deemed to be effective until the consummation of such Liquidation Event, Public Offering or the occurrence of such other specified event and (ii) if such Liquidation Event, Public Offering or other specified event is consummated or occurs, all shares of Elected Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior thereto.

d. Procedure for Automatic Conversion. As of the date of, and in all cases subject to, the consummation of a Qualified Public Offering, all outstanding shares of Series A Preferred Stock shall be converted automatically, without further action, into the number of shares of Common Stock provided for in Section C.3(a), and such number of shares of Common Stock into which the Series A Preferred Stock is converted shall be deemed to have been issued to the holders of Series A Preferred Stock. Such holders shall as soon as practicable thereafter surrender the certificate or certificates evidencing the Series A Preferred Stock, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or an Affidavit of Loss with respect thereto. Upon surrender of such certificates or delivery of an Affidavit of Loss with respect thereto, the Corporation shall issue and deliver to such holder so surrendering such certificates or to such holder's designee, promptly (and in any event in such time as is sufficient to enable such holder to participate in such Qualified Public Offering) at an address designated by such holder, certificates for the number of shares of Common Stock into which such holder's Series A Preferred Stock shall have been converted.

e. Fractional Shares; Partial Conversion. No fractional shares shall be issued upon conversion of any shares of Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of Series A Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If any fractional interest in a share of Common Stock would, except for the provisions of the first sentence of this paragraph (e), be delivered upon any such conversion, the Corporation, in lieu of delivering the fractional share thereof, shall pay to the holder surrendering the Series A Preferred Stock for conversion an amount in cash equal to the current fair market value of such fractional interest as determined in good faith by the Board of Directors of the Corporation. In case the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered for conversion exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder thereof, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered that are not to be converted.

4. Adjustments.

a. Adjustments for Subdivisions, Combinations or Consolidation of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided by stock split, stock dividends or otherwise, into a greater number of shares of Common Stock, the Conversion Price then in effect with respect to Series A Preferred Stock shall, concurrently with the effectiveness of such subdivision, be proportionately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Series A Preferred Stock shall be increased in proportion to such increase in outstanding shares. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price then in effect with respect to each series of each class of Preferred Stock shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased so that the number of shares of Common Stock issuable on conversion of any shares of Series A Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

b. Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock or into any other securities or property, whether by capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction (other than a subdivision or combination of shares provided for above), each share of Series A Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such share of Series A Preferred Stock shall have been entitled upon such capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction if immediately prior to such capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction such holder had converted such holder's Series A Preferred Stock into Common Stock. The provisions of this Section C.4(b) shall similarly apply to successive capital reorganizations, reclassifications, mergers, combinations of shares, recapitalizations, consolidations, business combinations or other transactions. The Corporation shall not effect any Sale of the Corporation that is not, in accordance with Section C.2(b), a Liquidation Event unless prior to or simultaneously with the consummation thereof the successor Corporation or purchaser, as the case may be, shall assume by written instrument the obligation to deliver to the holders of Series A Preferred Stock such shares of stock, securities or assets as, in accordance with the foregoing provisions, each such holder is entitled to receive.

c. Adjustment of the Conversion Price Upon Issuance of Additional Shares of Common Stock.

(i) In the event that on or before June 30, 2005, the Corporation issues or sells, or in accordance with Section C.4(e) is deemed to have issued or sold, any shares of Common Stock or Convertible Securities without consideration for a consideration per share less than the applicable Conversion Price in effect immediately prior to such issue or sale, then in such event, such Conversion Price should be reduced to a price equal to the issue price, or deemed issue, of such Common Stock.

(ii) In the event the Corporation, at any time after the June 30, 2005 issues or sells, or in accordance with Section C.4(e) is deemed to have issued or sold, any shares of Common Stock or Convertible Securities without consideration or for a consideration per share less than the applicable Conversion Price in effect immediately prior to such issue or sale, then and in such event, such Conversion Price shall be reduced, concurrently with such issue or sale, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, (A) the numerator of which shall be the sum of (1) the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (2) the quotient of (x) the aggregate consideration, if any, received or receivable by the Corporation on account of such issue or sale divided by (y) the Conversion Price in effect immediately prior to such issue or sale; and (B) the denominator of which shall be the sum of (1) number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale plus (2) the number of shares of Common Stock so issued or sold or, in accordance with Section C.4(e), is deemed to have been issued or sold.

d. Multiple Closing Dates. In the event the Corporation shall issue on more than one date after June 30, 2005 Additional Shares of Common Stock that are comprised of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 120 days, then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

e. Effect of Certain Events on Conversion Prices. For purposes of determining the adjusted Conversion Price with respect to Series A Preferred Stock under Section C.4(c), the following shall be applicable:

(i) Issuance of Convertible Securities. If the Corporation in any manner grants, issues or sells any Convertible Securities, whether or not the rights to exercise, convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such exercise, conversion or exchange is less than the Conversion Price in effect immediately prior to the time of such grant, issue or sale, then the maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the grant, issue or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (x) the total amount received or receivable by the Corporation as consideration for the grant, issue or sale of such Convertible Securities, plus the cumulative minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange thereof and, if applicable, the exercise, conversion and exchange of any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for (in each case, as set forth in the instruments and agreements relating thereto, without regard to any provision contained therein for a

subsequent adjustment of such consideration), by (y) the total maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities (as set forth in the instruments and agreements relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number). No further adjustment of the Conversion Price shall be made when Common Stock and, if applicable, any other Convertible Securities, are actually issued upon the exercise, conversion or exchange of such Convertible Securities. If the Corporation issues any Convertible Securities that entitle the holder thereof, *inter alia*, both (i) to exercise, convert or exchange the same into or for Common Stock or otherwise to participate with the holders of Common Stock in distributions upon the occurrence of a Liquidation Event and (ii) the payment of a fixed or defined sum (such a sum being referred to as the "Preference Payment"), the "total maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities" for purposes of clause (y) above shall include, in addition to the amount described in clause (y) above, a number of shares of Common Stock equal to the quotient of (A) the aggregate Preference Payments of all such Convertible Securities so issued in excess of the total amount received or receivable by the Corporation as consideration for the issue of all such Convertible Securities, divided by (B) the total amount received or receivable by the Corporation as consideration for the issue of one of such Convertible Securities (as set forth in the instruments and agreements relating thereto).

(ii) Change in Exercise Price or Conversion Rate. If the additional consideration payable to the Corporation upon the exercise, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock should change at any time, the Conversion Price that is in effect at the time of such change that was adjusted in accordance with Section C.4(e)(i) upon the issuance of such Convertible Securities shall be readjusted to the Conversion Price that would have been in effect at such time had such Convertible Securities that are still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time such Convertible Securities were initially granted, issued or sold; and on the termination date of any right to exercise, convert or exchange such Convertible Securities without such right having been exercised, the Conversion Price then in effect hereunder shall be adjusted to the Conversion Price that would have been in effect at the time of such termination had such Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(iii) Exceptions for Excluded Securities. Notwithstanding the foregoing, no adjustments shall be made under Section C.4(c) and (e) with respect to the issue of any Excluded Securities.

(iv) Valuation of Non-Cash Consideration. The consideration received by the Corporation for the issue of any shares of Common Stock, Convertible Securities or any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for shall be computed as follows:

- (A) Insofar as such consideration consists of cash, such consideration shall equal the aggregate amount of cash paid or payable to the Corporation prior to amounts paid or payable for accrued interest or accrued dividends and prior to any commissions or expenses paid by the Corporation;
- (B) Insofar as such consideration consists of property other than cash, such consideration shall be calculated at the fair value thereof at the time of

such issue, as determined in good faith by the Board of Directors with the concurrence of at least one Series A Director Designee; and

- (C) In the event shares of Common Stock, Convertible Securities or any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for are issued together with other securities or other assets of the Corporation for consideration that is allocable to both such Common Stock and Convertible Securities, and to such other securities and assets, the portion of such consideration allocable to such Common Stock or Convertible Securities shall be that set forth in the instruments and agreements issued or entered into in connection with such transaction, and if no such allocation is so set forth, then the portion of such consideration allocable to such Common Stock or Convertible Securities, calculated as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors, with the concurrence of at least one Series A Director Designee.

f. Other Dilutive Issuances. If an event not specified in this Section C.4 occurs that has substantially the same economic effect on the Series A Preferred Stock as those events specifically enumerated above in this Section C.4, then this Section C.4 shall be construed liberally, *mutatis mutandis*, in order to provide the holders of Series A Preferred Stock the intended benefit of the protections provided under this Section C.4. In such event, the Corporation's Board of Directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series A Preferred Stock; *provided* that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this Section A.4 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock as otherwise determined in accordance with this Section C.4.

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

h. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of more than \$0.001 pursuant to this Section C.4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based and the Conversion Price then in effect. The Corporation shall, upon the written request at any time by any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of such holder's Series A Preferred Stock.

i. Rounding. All calculations under this Section C.4 shall be made to (i) the nearest one cent or (ii) the nearest one hundredth of a share or (iii) the nearest one percent, as the case may be.

5. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the issued or issuable shares of Series A Preferred Stock, such number of its shares of Common Stock as the case may be, as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation will take all such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

6. No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Series A Preferred Stock in any manner that would interfere with the timely conversion of any shares of Series A Preferred Stock in accordance with the provisions hereof.

7. Listing on Securities Exchanges, etc. The Corporation will list on each national securities exchange and NASDAQ on which any Common Stock may at any time be listed, subject to official notice of issuance upon the conversion of the Series A Preferred Stock, all shares of Common Stock from time to time issuable upon the conversion of Series A Preferred Stock pursuant to this Charter and will maintain such listing as long as any Common Stock is listed.

8. Notice.

a. Liquidation Events, Extraordinary Transactions, Etc. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any Liquidation Event or (ii) any Liquidation Event is approved by the Board of Directors or the Corporation enters into any agreement with respect thereto, the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Series A Preferred Stock at least ten (10) days prior to such record date specified therein or the expected effective date of any such transaction, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event is expected to become effective and, in the case of a Sale of the Corporation, the identity of the parties thereto, and (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event.

b. Waiver of Notice. The Requisite Series A Stockholders may at any time upon written notice to the Corporation waive, either prospectively or retrospectively, any notice provisions specified herein, and any such waiver shall be effective as to all holders of Series A Preferred Stock.

c. General. In the event that the Corporation provides any notice, report or statement to all holders of Common Stock, the Corporation shall at the same time provide a copy of any such notice, report or statement to each holder of outstanding shares of Series A Preferred Stock.

9. No Reissuance of Preferred Stock. No share or shares of Series A Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares that the Corporation shall be authorized to issue.

10. *Reserved*

11. Redemption.

a. The Series A Preferred Stock may be redeemed at any time on or after the Series A Maturity Date (x) in whole, at the option of the Corporation, or (y) in whole or in part, at the option of any holder thereof (each an "Optional Redemption"). In any such case, if the Corporation elects to effect an Optional Redemption, it shall notify each holder of Series A Preferred Stock of such election in writing (the "Corporation Redemption Notice") no less than sixty (60) days prior to the proposed closing date of the Optional Redemption; and if a holder elects to effect an Optional Redemption, each holder electing to redeem his Series A Preferred Stock shall notify the Corporation in writing (the "Holder Redemption Notice" and together with the Corporation Redemption Notice, the "Redemption Notice") of his election to exercise the rights afforded by this Section C.11. Upon receipt of the Holder Redemption Notice, the Corporation shall promptly notify the remaining holders of the Series A Preferred Stock thereof. Any such remaining holders who submit a substantially similar notice within thirty (30) days following receipt of the Holder Redemption Notice shall be deemed to have the benefit of, and be subject to, the Holder Redemption Notice upon the same terms applicable to the holders of Series A Preferred Stock originally delivering such Redemption Notice. The redemption price for each share of Series A Preferred Stock shall be cash in an amount equal to the greater of (i) the Series A Liquidation Preference on the date the redemption is completed and (ii) the Fair Market Value of the shares of Common Stock into which the shares of Series A Preferred Stock subject to such Redemption Notice are convertible as of the date of the Redemption Notice with respect thereto (the "Determination Date"), determined as provided below. A portion of the redemption price equal to the Series A Liquidation Preference shall be due and payable on or before the sixtieth (60th) day following the giving of any Redemption Notice, and the balance (if any) shall be due and payable on or before the one hundred twentieth (120th) day following the giving of any Redemption Notice.

b. The "Fair Market Value" of each share of Series A Preferred Stock subject to such Redemption Notice means the total consideration that would be received by a holder of one share of such Series A Preferred Stock upon the sale of all of the Corporation's issued and outstanding capital stock and Convertible Securities in a single transaction or series of related transactions to a buyer in which the buyer is under no compulsion to buy and the holders of such capital stock and Convertible Securities are under no compulsion to sell, all parties having reasonable knowledge of all relevant facts, with no minority interest discount being applied and no other discount being applied for any other reason. Such Fair Market Value shall be that which is negotiated by the Corporation and the holders of a majority of the shares of Series A Preferred Stock to be redeemed (the "Requisite Percentage Holders"). If the Corporation and the Requisite Percentage Holders fail to agree on the Fair Market Value within thirty (30) days of the Determination Date, then the Corporation and the Requisite Percentage Holders shall attempt to agree upon an appraiser to determine the Fair Market Value, which appraiser shall be a nationally recognized investment banking firm (the firm or firms engaged to determine the Fair Market Value hereunder having such qualifications being referred to as an "Appraiser"). If, within the ten (10) day period after the expiration of such thirty (30) day period, the Corporation and the Requisite Percentage Holders agree upon an Appraiser to determine the Fair Market Value, then such Appraiser shall make such determination within thirty (30) days of the date of such Appraiser's engagement, and such determination shall govern. If the Corporation and the Requisite Percentage Holders do not, within such ten (10) day period, agree as to a single Appraiser, or if the Appraiser appointed as provided above fails to determine such Fair Market Value within thirty (30) days of the date of such Appraiser's engagement, then each of the Corporation and the Requisite Percentage Holders, by notice to the other, shall appoint one Appraiser which is a nationally recognized investment banking firm. If either the Corporation or the Requisite Percentage Holders shall fail to appoint such an Appraiser within ten (10) days after the lapse of such ten (10) or thirty (30) day period, as applicable, then the Appraiser appointed by the party that does so appoint an Appraiser shall make the determination

of such Fair Market Value and such determination shall govern. If two Appraisers are appointed and they agree upon such Fair Market Value, their joint determination shall govern. If said two Appraisers fail to reach agreement within thirty (30) days after the appointment of the last Appraiser to be appointed, the two Appraisers selected shall promptly select a nationally recognized investment banking firm to be the third Appraiser. Such third Appraiser shall, within fifteen (15) days following such Appraiser's appointment, select one of the two other appraisals as constituting Fair Market Value. All decisions of the Appraiser(s) shall be rendered in writing and shall be signed by the Appraiser(s). The Fair Market Value determined as herein provided shall be conclusive, final and binding on the parties and shall be enforceable in any court having jurisdiction over a proceeding brought to seek such enforcement. The cost of the Fair Market Value determination shall not be taken into account in determining Fair Market Value and shall be borne by the Corporation.

c. If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock are insufficient to redeem the total number of outstanding shares of Series A Preferred Stock entitled to redemption, the holders of shares of Series A Preferred Stock entitled to redemption shall share ratably in any funds legally available for redemption of such shares according to the respective amounts that would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series A Preferred Stock, such funds will be used at the earliest permissible time to redeem the balance of such shares, or such portion thereof for which funds are then legally available. The Corporation shall be obligated to use its best efforts to take such actions as may be necessary (including, without limitation, the issuance of additional equity securities, the revaluation or recapitalization of the Corporation or the consummation of Sale of the Corporation) in order to permit the full and timely redemption of the shares of Series A Preferred Stock entitled to redemption.

d. Until the holders of Series A Preferred Stock who have exercised redemption rights hereunder, or been subject to an Optional Redemption at the election of the Corporation, have received in cash all amounts provided in this Section C.11, the Series A Preferred Stock being redeemed and not yet paid for shall not be considered redeemed. Such unredeemed shares shall remain outstanding and shall continue to have all rights and preferences (including, without limitation, dividend, conversion and voting rights) provided for herein; *provided, however*, that (i) the rate of dividends accruing on the Series A Preferred Stock for purposes of Section 1 hereof shall increase to fifteen percent (15%) per annum effective on the 61st day after the Redemption Notice applicable thereto; and (ii) the holders of such unredeemed shares shall have the ongoing right to be redeemed, together with such rights and remedies as may be available under applicable law, at each such holder's election either (A) to have such holder's remaining outstanding shares of Series A Preferred Stock redeemed, or (B) rescind the Redemption Notice with respect to all or any portion of such unredeemed shares and to continue holding such shares, free of any right of the Corporation to redeem such shares. If a holder of Series A Preferred Stock so elects to rescind the Redemption Notice with respect to Series A Preferred Stock, the rate of dividends arising thereon shall not be deemed to have increased as provided in clause (i) of this subsection (d).

e. The notices provided for in this Section C.11 shall be sent, if by or on behalf of the Corporation, to the holders of the Series A Preferred Stock at their respective addresses as shall then appear on the records of the Corporation, or if by any holder of Series A Preferred Stock to the Corporation, at its principal executive office or registered office in Delaware, by first class mail, postage prepaid, (i) notifying such recipient of the redemption, the date of such redemption, the number of shares of Series A Preferred Stock to be redeemed, and the redemption price therefor and (ii) in the case of any notice by or on behalf of the Corporation, stating the place or places at which the shares called for

redemption shall, upon presentation and surrender of such certificates representing such shares, be redeemed.

f. Each holder of Series A Preferred Stock may rescind the Holder Redemption Notice with respect to all or any portion of his or its share of Series A Preferred Stock at any time prior to the Corporation's paying the redemption price therefor in accordance herewith.

12. Special Approval Rights. The affirmative vote of the Requisite Series A Stockholders shall be necessary to authorize the Corporation to take any of the following actions (herein, each a "Restricted Action"):

a. Authorize or increase the authorized number of shares of, or issue additional shares of Series A Preferred Stock or any class or series of the Corporation's capital stock or options, warrants or other rights to acquire any such capital stock ranking with respect to liquidation preference, dividends or voting rights, senior in right to, or on a parity with, the Series A Preferred Stock;

b. Amend, repeal or change, directly or indirectly, any of the provisions of the amended and Restated Articles of Incorporation of the Corporation, as in effect on the date of the original issuance of any Series A Preferred Stock, or the By-laws of the Corporation;

c. Authorize or effect, or permit any Subsidiary to authorize or effect, the sale, lease, license, abandonment or other disposition of any material assets of the Corporation or any Subsidiary other than in the ordinary course of business;

d. Authorize or effect, or permit any Subsidiary to authorize or effect, the merger or consolidation of the Corporation or any Subsidiary with any other Person as a result of which the shareholders of the Corporation immediately prior to such merger and consolidation shall own less than 50.1% of the voting securities of the surviving corporation.

D. SERIES B PREFERRED STOCK. The Corporation is authorized to issue Four Hundred Ninety Three Thousand Six Hundred (493,600) shares of Preferred Stock as "Series B Preferred Stock," which shall have the designations, voting powers, preferences and relative, participating, optional and other special rights and qualifications, limitations and restrictions on such rights as follows:

1. Dividends. No dividends shall accrue or be payable on the Series B Preferred Stock.

2. Liquidation Preference. Upon (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, (ii) a Sale of the Corporation or (iii) a reorganization of the Corporation required by any court or administrative body in order to comply with any provision of law (each of the events referred to in clauses (i), (ii) and (iii) being referred to as a "Liquidation Event"), each holder of Series C Preferred Stock as defined below shall be entitled, after provision for the payment of the Corporation's debts and other liabilities and in preference to, and, before any amount or property shall be paid or distributed on account of any Junior Securities or any other class or series of the Corporation's Capital Securities, to be paid in full with respect to each share of Series C Preferred Stock out of the assets of the Corporation available for distribution to stockholders, which assets shall be cash, and thereafter, to the extent thereof, first with securities traded on a national securities exchange or nationally recognized interdealer quotation system, and thereafter securities traded over-the-counter or securities with no active public market (with the value thereof determined in accordance with Article III, Section C.2(d)) in an amount equal to the Series C Liquidation Preference. If upon

any Liquidation Event the amount available for distribution among the holders of all outstanding Series C Preferred Stock is insufficient to permit the payment of the Series C Liquidation Preference of each share of Series C Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Series C Preferred Stock ratably in proportion to the relative Series C Liquidation Preferences of the Series C Preferred Stock held by such holders; and the holders of Series A Preferred Stock, Series B Preferred Stock, Common Stock, and of any other Junior Securities shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof. Upon any Liquidation Event, after the holders of Series C Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Series C Preferred Stock as provided above in this Section C.2(a), the remaining net assets of the Corporation shall be distributed first to the holders of Series A Preferred Stock in an amount equal to the Series A Liquidation Preference. If upon any Liquidation Event the amount available for distribution among the holders of all outstanding Series A Preferred Stock is insufficient to permit the payment of the Series A Liquidation Preference of each share of Series A Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Series A Preferred Stock ratably in proportion to the relative Series A Liquidation Preferences of the Series A Preferred Stock held by such holders; and the holders of Series B Preferred Stock, Common Stock and of any other Junior Securities shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof. Upon any Liquidation Event, after the holders of Series C Preferred Stock and Series A Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Preferred Stock as provided above in this Section A.2(a), the remaining net assets of the Corporation shall be distributed first to the holders of the Series B Preferred Stock as provided in Section D of this Article III, and thereafter ratably among the holders of Series A Preferred Stock, the holders of Series C Preferred Stock, and Common Stock (with each share of Series A Preferred Stock and Series C preferred Stock, being deemed for such purpose to equal the number of shares of Common Stock, including fractions thereof, into which such share Preferred Stock is convertible in accordance with the provisions of Section C.3 and Section E.3 hereof).

3. Conversion. The Series B Preferred Stock shall not be convertible into or exchangeable for any other security of the Corporation.

4. Redemption. The Corporation shall redeem the Series B Preferred Stock by payment of \$1.00 for each share of Series B Preferred Stock outstanding only upon the occurrence of a Sale of the Corporation or within not more than six (6) months after all Series A and Series C Preferred Stock have been fully redeemed, whichever first occurs.

E. SERIES C PREFERRED STOCK. The Corporation is authorized to issue up to Two Million (2,000,000) shares of Preferred Stock as "Series C Preferred Stock," which shall be senior to the Common Stock, Series A Preferred and Series B Preferred Stock of the Corporation, and shall have the designations, voting powers, preferences and relative, participating, optional and other special rights and qualifications, limitations and restrictions on such rights as follows:

1. Dividends.

a. No dividends shall accrue or be payable on the Series C Preferred Stock.

b. Without the consent of the Requisite Series C Preferred Stockholders, so long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not declare, pay or set apart for payment any dividends or make any other distribution on or redeem any Junior Securities (including without limitation Common Stock, Series A Preferred Stock, and Series B Preferred Stock) or other class or series of the Corporation's Capital Securities (other than stock dividends and distributions in the nature of a stock split or the like) and will not permit any Subsidiary to redeem, purchase or otherwise acquire for value, or set apart for any sinking or other analogous fund for the redemption or purchase of, any Junior Securities; *provided, however*, that (i) the Corporation may purchase, redeem or acquire shares of Common Stock and Convertible Securities issued to directors and employees of, and consultants to, the Corporation pursuant to equity incentive plans upon termination of employment or in accordance with other arrangements approved by the Board of Directors or as otherwise approved by the Requisite Series C Preferred Stockholders, and (ii) the Corporation may redeem the Series B Preferred Stock if permitted by Article III.D.4 above. Notwithstanding the above, Series A Preferred dividends shall continue to accrue as provided in Article III Section C above.

2. Liquidation Preference.

a. Upon (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, (ii) a Sale of the Corporation or (iii) a reorganization of the Corporation required by any court or administrative body in order to comply with any provision of law (each of the events referred to in clauses (i), (ii) and (iii) being referred to as a "Liquidation Event"), each holder of Series C Preferred Stock as defined below shall be entitled, after provision for the payment of the Corporation's debts and other liabilities and in preference to, and, before any amount or property shall be paid or distributed on account of any Junior Securities or any other class or series of the Corporation's Capital Securities, to be paid in full with respect to each share of Series C Preferred Stock out of the assets of the Corporation available for distribution to stockholders, which assets shall be cash, and thereafter, to the extent thereof, first with securities traded on a national securities exchange or nationally recognized interdealer quotation system, and thereafter securities traded over-the-counter or securities with no active public market (with the value thereof determined in accordance with Article III, Section C.2(d)), in an amount equal to the Series C Liquidation Preference. If upon any Liquidation Event the amount available for distribution among the holders of all outstanding Series C Preferred Stock is insufficient to permit the payment of the Series C Liquidation Preference of each share of Series C Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Series C Preferred Stock ratably in proportion to the relative Series C Liquidation Preferences of the Series C Preferred Stock held by such holders; and the holders of Series A Preferred Stock, Series B Preferred Stock, Common Stock, and of any other Junior Securities shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof. Upon any Liquidation Event, after the holders of Series C Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Series C Preferred Stock as provided above in this Section C.2(a), the remaining net assets of the Corporation shall be distributed first to the holders of Series A Preferred Stock in an amount equal to the Series A Liquidation Preference. If upon any Liquidation Event the amount available for distribution among the holders of all outstanding Series A Preferred Stock is insufficient to permit the payment of the Series A Liquidation Preference of each share of Series A Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Series A Preferred Stock ratably in proportion to the relative Series A Liquidation Preferences of the Series A Preferred Stock held by such holders; and the holders of Series B Preferred Stock, Common Stock and of any other Junior Securities shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof. Upon any Liquidation Event, after the holders of Series C Preferred Stock and Series A Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Preferred Stock as

provided above in this Section A.2(a), the remaining net assets of the Corporation shall be distributed first to the holders of the Series B Preferred Stock as provided in Section D of this Article III, and thereafter ratably among the holders of Series A Preferred Stock, the holders of Series C Preferred Stock, and Common Stock (with each share of Series A Preferred Stock and Series C preferred Stock, being deemed for such purpose to equal the number of shares of Common Stock, including fractions thereof, into which such share Preferred Stock is convertible in accordance with the provisions of Section C.3 and Section E.3 hereof).

b. Consolidation, Merger, etc.

(i) Notwithstanding Section E.2(a), neither a Sale of the Corporation nor any reorganization of the Corporation of the type referenced in clause (iii) of Section E.2(a) shall be deemed to be a Liquidation Event for the purposes of this Section E.2 if the Requisite Series C Stockholders waive in writing the provisions of this Section E.2 with respect to such event.

(iii) The affirmative vote of the Requisite Series C Stockholders, acting by written consent or voting separately as single class in person or by proxy at an annual meeting or special meeting called for the purpose, shall be necessary to authorize the Corporation to enter into or effect any Sale of the Corporation unless immediately upon giving effect thereto the Series C Liquidation Preference with respect to each outstanding share of Series C Preferred Stock, calculated through the date such Sale of the Corporation is consummated, is paid in full as provided in Section E.2(a).

c. No Effect on Conversion Rights. The provisions of this Section E.2 shall not in any way limit the right of the holders of Series C Preferred Stock to elect to convert their shares of Series C Preferred Stock into shares of Common Stock in accordance with Section E.3 hereof prior to or in connection with any Liquidation Event.

d. Valuation of Distribution Securities. Any securities or other consideration to be delivered to the holders of Series C Preferred Stock upon any Liquidation Event in accordance with the terms hereof shall be valued as follows:

(i) If the consideration consists of cash or cash equivalents, then the value shall be computed at the aggregate amount of the cash or cash equivalents so delivered;

(ii) The per share value of securities traded on a national securities exchange or a nationally recognized interdealer quotation system shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 15-day period ending three (3) Business Days prior to the closing of such Liquidation Event;

(iii) The per share value of securities traded over-the-counter shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) Business Days prior to the closing of such Liquidation Event; and

(iv) For all other consideration, the value shall be the fair market value thereof as mutually determined by the Corporation and the Requisite Series C Stockholders; provided that if the Corporation and the Requisite Series C Stockholders are unable to reach agreement, then by independent appraisal made by an investment bank hired and paid by the Corporation, such investment banker to be reasonably acceptable to the Requisite Series C Stockholders.

3. Conversion into Common Stock. The holders of Series C Preferred Stock shall have the following conversion rights:

a. Voluntary Conversion. At any time, each holder of Series C Preferred Stock shall be entitled, without the payment of any additional consideration, to cause all or any portion of the shares of Series C Preferred Stock held by such holder to be converted into the number of shares of fully paid and nonassessable Common Stock determined by (i) the number of shares of Series C Preferred Stock being converted, divided by (ii) the Series C Preferred Stock Conversion Price then in effect.

b. Automatic Conversion. Each share of Series C Preferred Stock shall automatically be converted, without the payment of any additional consideration, into the number of shares of Common Stock provided for in Section E.3(a) immediately upon (i) the consummation of the Corporation's first underwritten Public Offering (A) resulting in at least \$10 Million of proceeds to the Corporation, net of underwriting discounts and commissions and offering expenses, and (B) after giving effect to which the Corporation's Common Stock is listed on a U.S. national securities exchange or admitted for quotation on the Nasdaq National Market or a successor thereto (a "Qualified Public Offering"); *provided* that if a Qualified Public Offering is consummated, all outstanding shares of Series C Preferred Stock shall be deemed to have been converted into shares of Common Stock as provided in this Section E.3 immediately prior to such consummation.

c. Procedure for Voluntary Conversion: Effective Date. Upon the election to convert the Series C Preferred Stock made in accordance with Section E.3(a), the holders of the Series C Preferred Stock making such election shall provide written notice of such conversion (the "Voluntary Conversion Notice") to the Corporation setting forth the number of shares of Series C Preferred Stock each such holder elects to convert into Common Stock (the "Elected Preferred Stock"). On the date the Voluntary Conversion Notice is delivered to the Corporation, such shares of Elected Preferred Stock shall thereupon be converted, without further action, into the number of shares of Common Stock provided for in Section E.3(a), and such number of shares of Common Stock into which the Elected Preferred Stock is converted shall thereupon be deemed to have been issued to such holders of the Elected Preferred Stock. Such holders shall as soon as practicable thereafter surrender to the Corporation at the Corporation's principal executive office the certificate or certificates evidencing the Elected Preferred Stock, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or an Affidavit of Loss with respect thereto. Upon surrender of such certificates or delivery of an Affidavit of Loss with respect thereto, the Corporation shall issue and deliver to the holder so surrendering such certificates or to such holder's designee, at an address designated by such holder, certificates for the number of shares of Common Stock into which such holder's Elected Preferred Stock shall have been converted. The issuance of certificates for shares of Common Stock upon conversion of Elected Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such stock. Notwithstanding anything to the contrary set forth in this Section E.3(c), in the event that the holders of shares of Series C Preferred Stock elect to convert such shares pursuant to Section E.3(a) in connection with any Liquidation Event, Public Offering or other specified event, (i) such conversion may at the election of such holders be conditioned upon the consummation of such Liquidation Event, Public Offering or the occurrence of such other specified event, in which case, such conversion shall not be deemed to be effective until the consummation of such Liquidation Event, Public Offering or the occurrence of such other specified event and (ii) if such Liquidation Event, Public Offering or other specified event is consummated or occurs, all shares of Elected Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior thereto.

d. Procedure for Automatic Conversion. As of the date of, and in all cases subject to, the consummation of a Qualified Public Offering, all outstanding shares of Series C Preferred Stock shall be converted automatically, without further action, into the number of shares of Common Stock provided for in Section E.3(a), and such number of shares of Common Stock into which the Series A Preferred Stock is converted shall be deemed to have been issued to the holders of Series C Preferred Stock. Such holders shall as soon as practicable thereafter surrender the certificate or certificates evidencing the Series C Preferred Stock, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or an Affidavit of Loss with respect thereto. Upon surrender of such certificates or delivery of an Affidavit of Loss with respect thereto, the Corporation shall issue and deliver to such holder so surrendering such certificates or to such holder's designee, promptly (and in any event in such time as is sufficient to enable such holder to participate in such Qualified Public Offering) at an address designated by such holder, certificates for the number of shares of Common Stock into which such holder's Series C Preferred Stock shall have been converted.

e. Fractional Shares; Partial Conversion. No fractional shares shall be issued upon conversion of any shares of Series C Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of Series C Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If any fractional interest in a share of Common Stock would, except for the provisions of the first sentence of this paragraph (e), be delivered upon any such conversion, the Corporation, in lieu of delivering the fractional share thereof, shall pay to the holder surrendering the Series C Preferred Stock for conversion an amount in cash equal to the current fair market value of such fractional interest as determined in good faith by the Board of Directors of the Corporation. In case the number of shares of Series C Preferred Stock represented by the certificate or certificates surrendered for conversion exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder thereof, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series C Preferred Stock represented by the certificate or certificates surrendered that are not to be converted.

4. Adjustments.

a. Adjustments for Subdivisions, Combinations or Consolidation of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided by stock split, stock dividends or otherwise, into a greater number of shares of Common Stock, the Conversion Price then in effect with respect to Series C Preferred Stock shall, concurrently with the effectiveness of such subdivision, be proportionately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Series C Preferred Stock shall be increased in proportion to such increase in outstanding shares. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price then in effect with respect to each series of each class of Preferred Stock shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased so that the number of shares of Common Stock issuable on conversion of any shares of Series C Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

b. Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Series C Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock or into any other securities or property, whether by capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction (other than a subdivision or combination of shares provided for above), each share of Series C Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of

Common Stock of the Corporation deliverable upon conversion of such share of Series C Preferred Stock shall have been entitled upon such capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction if immediately prior to such capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction such holder had converted such holder's Series C Preferred Stock into Common Stock. The provisions of this Section E.4(b) shall similarly apply to successive capital reorganizations, reclassifications, mergers, combinations of shares, recapitalizations, consolidations, business combinations or other transactions. The Corporation shall not effect any Sale of the Corporation that is not, in accordance with Section E.2(b), a Liquidation Event unless prior to or simultaneously with the consummation thereof the successor Corporation or purchaser, as the case may be, shall assume by written instrument the obligation to deliver to the holders of Series C Preferred Stock such shares of stock, securities or assets as, in accordance with the foregoing provisions, each such holder is entitled to receive.

c. Adjustment of the Conversion Price Upon Issuance of Additional Shares of Common Stock.

(i) Reserved.

(ii) In the event the Corporation issues or sells, or in accordance with Section E.4(e) is deemed to have issued or sold, any shares of Common Stock or Convertible Securities without consideration or for a consideration per share less than the applicable Series C Preferred Stock Conversion Price in effect immediately prior to such issue or sale, then and in such event, such Series C Preferred Stock Conversion Price shall be reduced, concurrently with such issue or sale, to a price (calculated to the nearest cent) determined by multiplying such Series C Preferred Stock Conversion Price by a fraction, (A) the numerator of which shall be the sum of (1) the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (2) the quotient of (x) the aggregate consideration, if any, received or receivable by the Corporation on account of such issue or sale divided by (y) the Series C Preferred Stock Conversion Price in effect immediately prior to such issue or sale; and (B) the denominator of which shall be the sum of (1) number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale plus (2) the number of shares of Common Stock so issued or sold or, in accordance with Section E.4(e), is deemed to have been issued or sold.

d. Reserved.

e. Effect of Certain Events on Conversion Prices. For purposes of determining the adjusted Conversion Price with respect to Series C Preferred Stock under Section E.4(c), the following shall be applicable:

(i) Issuance of Convertible Securities. If the Corporation in any manner grants, issues or sells any Convertible Securities, whether or not the rights to exercise, convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such exercise, conversion or exchange is less than the Series C Preferred Stock Conversion Price in effect immediately prior to the time of such grant, issue or sale, then the maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the grant, issue or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (x) the total amount received or receivable by the Corporation as consideration

for the grant, issue or sale of such Convertible Securities, plus the cumulative minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange thereof and, if applicable, the exercise, conversion and exchange of any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for (in each case, as set forth in the instruments and agreements relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration), by (y) the total maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities (as set forth in the instruments and agreements relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number). No further adjustment of the Conversion Price shall be made when Common Stock and, if applicable, any other Convertible Securities, are actually issued upon the exercise, conversion or exchange of such Convertible Securities. If the Corporation issues any Convertible Securities that entitle the holder thereof, *inter alia*, both (i) to exercise, convert or exchange the same into or for Common Stock or otherwise to participate with the holders of Common Stock in distributions upon the occurrence of a Liquidation Event and (ii) the payment of a fixed or defined sum (such a sum being referred to as the "Preference Payment"), the "total maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities" for purposes of clause (y) above shall include, in addition to the amount described in clause (y) above, a number of shares of Common Stock equal to the quotient of (A) the aggregate Preference Payments of all such Convertible Securities so issued in excess of the total amount received or receivable by the Corporation as consideration for the issue of all such Convertible Securities, divided by (B) the total amount received or receivable by the Corporation as consideration for the issue of one of such Convertible Securities (as set forth in the instruments and agreements relating thereto).

(ii) Change in Exercise Price or Conversion Rate. If the additional consideration payable to the Corporation upon the exercise, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock should change at any time, the Conversion Price that is in effect at the time of such change that was adjusted in accordance with Section E.4(e)(i) upon the issuance of such Convertible Securities shall be readjusted to the Conversion Price that would have been in effect at such time had such Convertible Securities that are still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time such Convertible Securities were initially granted, issued or sold; and on the termination date of any right to exercise, convert or exchange such Convertible Securities without such right having been exercised, the Conversion Price then in effect hereunder shall be adjusted to the Conversion Price that would have been in effect at the time of such termination had such Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(iii) Exceptions for Excluded Securities. Notwithstanding the foregoing, no adjustments shall be made under Section E.4(c) and (e) with respect to the issue of any Excluded Securities.

(iv) Valuation of Non-Cash Consideration. The consideration received by the Corporation for the issue of any shares of Common Stock, Convertible Securities or any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for shall be computed as follows:

1. Insofar as such consideration consists of cash, such consideration shall equal the aggregate amount of cash paid or payable to the Corporation prior to amounts paid or payable for accrued interest or

accrued dividends and prior to any commissions or expenses paid by the Corporation;

2. Insofar as such consideration consists of property other than cash, such consideration shall be calculated at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors with the concurrence of at least one Series C Director Designee; and
3. In the event shares of Common Stock, Convertible Securities or any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for are issued together with other securities or other assets of the Corporation for consideration that is allocable to both such Common Stock and Convertible Securities, and to such other securities and assets, the portion of such consideration allocable to such Common Stock or Convertible Securities shall be that set forth in the instruments and agreements issued or entered into in connection with such transaction, and if no such allocation is so set forth, then the portion of such consideration allocable to such Common Stock or Convertible Securities, calculated as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors, with the concurrence of at least one Series C Director Designee.

f. Other Dilutive Issuances. If an event not specified in this Section E.4 occurs that has substantially the same economic effect on the Series C Preferred Stock as those events specifically enumerated above in this Section E.4, then this Section E.4 shall be construed liberally, *mutatis mutandis*, in order to provide the holders of Series C Preferred Stock the intended benefit of the protections provided under this Section E.4. In such event, the Corporation's Board of Directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series C Preferred Stock; *provided* that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this Section E.4 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series C Preferred Stock as otherwise determined in accordance with this Section E.4.

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

h. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of more than \$0.001 pursuant to this Section E.4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series C Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based and the Conversion Price then in effect. The Corporation shall, upon the written request at any time by any holder of Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate

setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of such holder's Series C Preferred Stock.

i. Rounding. All calculations under this Section E.4 shall be made to (i) the nearest one cent or (ii) the nearest one hundredth of a share or (iii) the nearest one percent, as the case may be.

5. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the issued or issuable shares of Series C Preferred Stock, such number of its shares of Common Stock as the case may be, as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series C Preferred Stock, the Corporation will take all such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

6. No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Series C Preferred Stock in any manner that would interfere with the timely conversion of any shares of Series C Preferred Stock in accordance with the provisions hereof.

7. Listing on Securities Exchanges, etc. The Corporation will list on each national securities exchange and NASDAQ on which any Common Stock may at any time be listed, subject to official notice of issuance upon the conversion of the Series C Preferred Stock, all shares of Common Stock from time to time issuable upon the conversion of Series C Preferred Stock pursuant to this Charter and will maintain such listing as long as any Common Stock is listed.

8. Notice.

a. Liquidation Events, Extraordinary Transactions, Etc. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any Liquidation Event or (ii) any Liquidation Event is approved by the Board of Directors or the Corporation enters into any agreement with respect thereto, the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Series C Preferred Stock at least ten (10) days prior to such record date specified therein or the expected effective date of any such transaction, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event is expected to become effective and, in the case of a Sale of the Corporation, the identity of the parties thereto, and (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event.

b. Waiver of Notice. The Requisite Series C Stockholders may at any time upon written notice to the Corporation waive, either prospectively or retrospectively, any notice provisions specified herein, and any such waiver shall be effective as to all holders of Series C Preferred Stock.

c. General. In the event that the Corporation provides any notice, report or statement to all holders of Common Stock, the Corporation shall at the same time provide a copy of any such notice, report or statement to each holder of outstanding shares of Series C Preferred Stock.

9. No Reissuance of Preferred Stock. No share or shares of Series C Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares that the Corporation shall be authorized to issue.

10. Reserved

11. Redemption.

a. The Series C Preferred Stock may be redeemed at any time on or after the Series C Maturity Date (x) in whole, at the option of the Corporation, or (y) in whole or in part, at the option of any holder thereof (each an "Optional Redemption"). In any such case, if the Corporation elects to effect an Optional Redemption, it shall notify each holder of Series C Preferred Stock of such election in writing (the "Corporation Redemption Notice") no less than sixty (60) days prior to the proposed closing date of the Optional Redemption; and if a holder elects to effect an Optional Redemption, each holder electing to redeem its Series C Preferred Stock shall notify the Corporation in writing (the "Holder Redemption Notice" and together with the Corporation Redemption Notice, the "Redemption Notice") of its election to exercise the rights afforded by this Section E.11. Upon receipt of the Holder Redemption Notice, the Corporation shall promptly notify the remaining holders of the Series C Preferred Stock thereof. Any such remaining holders who submit a substantially similar notice within thirty (30) days following receipt of the Holder Redemption Notice shall be deemed to have the benefit of, and be subject to, the Holder Redemption Notice upon the same terms applicable to the holders of Series C Preferred Stock originally delivering such Redemption Notice. The redemption price for each share of Series C Preferred Stock shall be cash in an amount equal to the greater of (i) the Series C Liquidation Preference on the date the redemption is completed and (ii) the Fair Market Value of the shares of Common Stock into which the shares of Series C Preferred Stock subject to such Redemption Notice are convertible as of the date of the Redemption Notice with respect thereto (the "Determination Date"), determined as provided below. A portion of the redemption price equal to the Series C Liquidation Preference shall be due and payable on or before the sixtieth (60th) day following the giving of any Redemption Notice, and the balance (if any) shall be due and payable on or before the one hundred twentieth (120th) day following the giving of any Redemption Notice.

b. The "Fair Market Value" of each share of Series C Preferred Stock subject to such Redemption Notice means the total consideration that would be received by a holder of one share of such Series C Preferred Stock upon the sale of all of the Corporation's issued and outstanding capital stock and Convertible Securities in a single transaction or series of related transactions to a buyer in which the buyer is under no compulsion to buy and the holders of such capital stock and Convertible Securities are under no compulsion to sell, all parties having reasonable knowledge of all relevant facts, with no minority interest discount being applied and no other discount being applied for any other reason. Such Fair Market Value shall be that which is negotiated by the Corporation and the holders of a majority of the shares of Series C Preferred Stock to be redeemed (the "Requisite Percentage Holders"). If the Corporation and the Requisite Percentage Holders fail to agree on the Fair Market Value within thirty (30) days of the Determination Date, then the Corporation and the Requisite Percentage Holders shall attempt to agree upon an appraiser to determine the Fair Market Value, which appraiser shall be a nationally recognized investment banking firm (the firm or firms engaged to determine the Fair Market Value hereunder having such qualifications being referred to as an

"Appraiser"). If, within the ten (10) day period after the expiration of such thirty (30) day period, the Corporation and the Requisite Percentage Holders agree upon an Appraiser to determine the Fair Market Value, then such Appraiser shall make such determination within thirty (30) days of the date of such Appraiser's engagement, and such determination shall govern. If the Corporation and the Requisite Percentage Holders do not, within such ten (10) day period, agree as to a single Appraiser, or if the Appraiser appointed as provided above fails to determine such Fair Market Value within thirty (30) days of the date of such Appraiser's engagement, then each of the Corporation and the Requisite Percentage Holders, by notice to the other, shall appoint one Appraiser which is a nationally recognized investment banking firm. If either the Corporation or the Requisite Percentage Holders shall fail to appoint such an Appraiser within ten (10) days after the lapse of such ten (10) or thirty (30) day period, as applicable, then the Appraiser appointed by the party that does so appoint an Appraiser shall make the determination of such Fair Market Value and such determination shall govern. If two Appraisers are appointed and they agree upon such Fair Market Value, their joint determination shall govern. If said two Appraisers fail to reach agreement within thirty (30) days after the appointment of the last Appraiser to be appointed, the two Appraisers selected shall promptly select a nationally recognized investment banking firm to be the third Appraiser. Such third Appraiser shall, within fifteen (15) days following such Appraiser's appointment, select one of the two other appraisals as constituting Fair Market Value. All decisions of the Appraiser(s) shall be rendered in writing and shall be signed by the Appraiser(s). The Fair Market Value determined as herein provided shall be conclusive, final and binding on the parties and shall be enforceable in any court having jurisdiction over a proceeding brought to seek such enforcement. The cost of the Fair Market Value determination shall not be taken into account in determining Fair Market Value and shall be borne by the Corporation.

c. If the funds of the Corporation legally available for redemption of shares of Series C Preferred Stock are insufficient to redeem the total number of outstanding shares of Series C Preferred Stock entitled to redemption, the holders of shares of Series C Preferred Stock entitled to redemption shall share ratably in any funds legally available for redemption of such shares according to the respective amounts that would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series C Preferred Stock, such funds will be used at the earliest permissible time to redeem the balance of such shares, or such portion thereof for which funds are then legally available. The Corporation shall be obligated to use its best efforts to take such actions as may be necessary (including, without limitation, the issuance of additional equity securities, the revaluation or recapitalization of the Corporation or the consummation of Sale of the Corporation) in order to permit the full and timely redemption of the shares of Series C Preferred Stock entitled to redemption.

d. Until the holders of Series C Preferred Stock who have exercised redemption rights hereunder, or been subject to an Optional Redemption at the election of the Corporation, have received in cash all amounts provided in this Section E.11, the Series C Preferred Stock being redeemed and not yet paid for shall not be considered redeemed. Such unredeemed shares shall remain outstanding and shall continue to have all rights and preferences (including, without limitation, conversion and voting rights) provided for herein; *provided, however*, that the holders of such unredeemed shares shall have the ongoing right to be redeemed, together with such rights and remedies as may be available under applicable law, at each such holder's election either (A) to have such holder's remaining outstanding shares of Series C Preferred Stock redeemed, or (B) rescind the Redemption Notice with respect to all or any portion of such unredeemed shares and to continue holding such shares, free of any right of the Corporation to redeem such shares. If a holder of Series C Preferred Stock so elects to rescind the Redemption Notice with respect to Series C Preferred Stock, the rate of dividends arising thereon shall not be deemed to have increased as provided in clause (i) of this subsection (d).

e. The notices provided for in this Section E.11 shall be sent, if by or on behalf of the Corporation, to the holders of the Series C Preferred Stock at their respective addresses as shall then appear on the records of the Corporation, or if by any holder of Series C Preferred Stock to the Corporation, at its principal executive office or registered office in Delaware, by first class mail, postage prepaid, (i) notifying such recipient of the redemption, the date of such redemption, the number of shares of Series C Preferred Stock to be redeemed, and the redemption price therefor and (ii) in the case of any notice by or on behalf of the Corporation, stating the place or places at which the shares called for redemption shall, upon presentation and surrender of such certificates representing such shares, be redeemed.

f. Each holder of Series C Preferred Stock may rescind the Holder Redemption Notice with respect to all or any portion of his or its share of Series C Preferred Stock at any time prior to the Corporation's paying the redemption price therefor in accordance herewith.

12. Special Approval Rights. The affirmative vote of the a majority of interest of all outstanding shares of Series C Preferred Stock shall be necessary to authorize the Corporation to take any of the following actions (herein, each a "Restricted Action"):

- a. Effect any sale, merger, acquisition, consolidation, recapitalization, liquidation or initial public offering;
- b. Sell any assets other than inventory in the ordinary course of business;
- c. Amend, repeal or change, directly or indirectly, any of the provisions of the Corporation's Amended and Restated Articles of Incorporation or the By-laws of the Corporation;
- d. Make any alteration or change in the rights, preferences, or privileges of the securities of the Corporation, which would materially and adversely affect the holders of the Series C Preferred Stock;
- e. Borrow any additional funded debt, except as replacement for existing funded debt of the Corporation (including any renewal of the Inventory Line of Credit the Corporation has from SunTrust Bank) and except for the loans of up to Five Hundred Thousand Dollars (\$500,000) from or through Banc Investment Group, LLC;
- f. Permit any other funded debt to be in default, or permit breach of any other material agreement to remain uncured for more than 30 days;
- g. Redeem any common or preferred stock, or make any payment to any stockholder or former stockholder in respect of antecedent obligations in excess of \$5,000 per month in addition to that already scheduled in a Budget or Use of Proceeds that has been approved by the Corporation's Board of Directors Budget;
- h. Create or authorize the creation of or issue any other security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Series A or Series C Preferred Stock, or increase the authorized number of shares of Series A or Series C Preferred Stock.

F. VOTING; ELECTION OF DIRECTORS; MISCELLANEOUS.

1. Voting Generally.

a. Except as specified to the contrary herein, the holder of each share of Series A Preferred Stock and Series C Preferred Stock shall vote with holders of Common Stock and all other classes and series of the Corporation's Capital Securities that, by their terms, state that they are entitled to vote with holders of Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders. For such purpose, each holder of Series A and Series C Preferred Stock shall be entitled to the number of votes per share of Series A and/or Series C Preferred Stock as equals the largest number of shares of Common Stock into which each share of Series A or Series C Preferred Stock may be converted pursuant to Article III Section C.3 and Section E.3 on the record date fixed for the determination of stockholders entitled to vote or on the effective date of any written consent of stockholders, as applicable. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula with respect to any holder of Series A or Series C Preferred Stock shall be rounded to the nearest whole number (with one-half rounded upward to one). There shall be no cumulative voting.

b. The Series B Preferred Stock shall have no voting rights, except as required by law.

2. Board of Directors. The Corporation's board of directors (the "Board of Directors") shall consist of up to six (6) individuals, unless the Requisite Series A Stockholders, the Requisite Series C Stockholders and the holders of Common Stock, each voting separately as a single class for such purposes, shall otherwise consent. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors. Members of the Board of Directors must be natural persons who are at least 18 years of age but need not be residents of Florida or shareholders of the Corporation.

3. Reserved.

4. Required Consents. Notwithstanding any other provision hereof, if any change in the composition of the Corporation's Board of Directors or in the voting rights of the holders of Series A or Series C Preferred Stock, requires the termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), or the consent of any other applicable governmental agencies or authorities (the "Required Consent(s)"), such change shall be conditioned upon the receipt of the Required Consent(s), in which case such change shall not be deemed to be effective until the receipt of such Required Consent(s). The Corporation shall take any and all action, including, without limitation, filing any and all applications, notices, and other documents with the applicable governmental agencies or authorities, as a holder of Series A or Series C Preferred Stock may reasonably request in order to obtain the Required Consent(s) and shall pay all fees and charges payable to any governmental authority or agency, including, without limitation, any fees payable in connection with any Required Consent under the HSR Act, or in connection with obtaining any Required Consent.

ARTICLE IV. DEFINITION OF TERMS USED IN THESE AMENDED AND RESTATED
ARTICLES OF INCORPORATION

The following terms are used herein with the meanings indicated:

“Affidavit of Loss” an affidavit or agreement satisfactory to the Corporation to indemnify the Corporation, without the need to post any bond or other security for such obligation) from any loss incurred in connection with the loss of any share certificate evidencing shares of the Corporation’s Capital Securities.

“Affiliate” means, as applied to the Corporation, any Person directly or indirectly controlling, controlled by or under direct or indirect common control with Corporation and shall also include (a) any Person who is a director or beneficial owner of at least five percent (5%) of the then outstanding equity securities of the Corporation and Family Members of any such Person and (b) any Person of which the Corporation or an Affiliate (as defined in clause (a) above) of the Corporation shall, directly or indirectly, either beneficially own at least ten percent (10%) of the then outstanding equity securities or constitute at least a 10% equity participant.

“Affiliate” or “affiliate” means with respect to any Person other than the Corporation, any other Person that would be considered to be an affiliate of such Person under Rule 144(a) of the rules of regulations of the Securities and Exchange Commission, as in effect on the date hereof.

“Appraiser” has the meaning specified in Article III, Section C.11(b).

“Board of Directors” has the meaning specified in Article III, Section D.2.

“Budget” has the meaning specified in Article III, Section B.8(a)(xiii).

“Business Day” means a day other than a Saturday, Sunday or legal holiday in the State of Florida.

“Capital Securities” means, as to any Person that is a corporation, the authorized shares of such Person’s capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the ownership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise control over such Person.

“Charter” means the Corporation’s Amended and Restated Articles of Incorporation, as amended from time to time.

“Common Stock” means the Corporation’s Common Stock, \$.001 par value per share.

“Common Stock Deemed Outstanding” means, at any time of measurement thereof, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving Common Stock after the Effective Time), plus (without duplication) the number of shares of Common Stock issuable upon the exercise in full of all outstanding Convertible Securities whether or not such Convertible Securities are convertible into or exchangeable or exercisable for Common Stock at such time, plus any shares of Common Stock issuable upon the exercise of Options available for grant under any Stock Option Plan approved by the Corporation’s Board of Directors.

“Conversion Price” see definitions of Series A Preferred Stock Conversion Price and Series C Preferred Stock Conversion Price.

“Convertible Securities” means securities or obligations that are exercisable for, convertible into or exchangeable for shares of Common Stock. The term includes shares of Series A Preferred Stock, options, warrants or other rights to subscribe for or purchase Common Stock or to subscribe for or purchase other Capital Securities or obligations that are, directly or indirectly, exercisable for, convertible into or exchangeable for Common Stock.

“Corporation Redemption Notice” has the meaning specified in Section C.11(a).

“Determination Date” has the meaning specified in Section C.11(a).

“Effective Time” means the time this Amendment to the Charter is filed with the Office of the Secretary of State of Florida in accordance with the FBCA.

“Elected Preferred Stock” has the meaning specified in Article III, Section C.3(c) and Section E.3(c).

“Excluded Securities” means the following Company Securities: (i) Company Securities issued by the Company in a Qualified Public Offering; (ii) Company Securities issued in consideration of the acquisition of another Person or business by the Company by merger, consolidation, amalgamation, exchange of shares, the purchase of substantially all of the assets or otherwise that has been approved by the Majority Investors; (iii) Convertible Securities or restricted stock grants issued to board members, employees, consultants, advisors or agents of the Corporation pursuant to an Approved Management Incentive Plan or other compensation arrangements approved by the Board of Directors, including Company Securities issued upon the exercise of any such Convertible Securities, not to exceed 3,000,000 shares of Common Stock; (iv) additional Common Stock and/or Convertible Securities for shares of Common Stock at an effective purchase price per share of Common Stock of no less than \$0.55 (subject to adjustments to reflect any stock split, stock dividend, combination or other similar event) issued in accordance with Section 3.3 of the Amended and Restated Shareholders Agreement; (v) Company Securities issued to the Company's stockholders upon any stock split, stock dividend, combination or other similar event with respect to the Common Stock; (vi) Company Securities issued as so-called equity kickers as part of an offering of debt securities by the Company approved by the Majority Investors, *provided* that, in the good faith judgment of the Board, such Company Securities are not the principal pricing feature of such debt offering; (vii) Series A Preferred Stock and Company Securities issued upon conversion of the Series A Preferred Stock; (viii) Series C Preferred Stock and Company Securities issued upon conversion of the Series C Preferred Stock; (ix) shares of Common Stock or Convertible Securities issued to Persons who are not Control Affiliates of the Company or of any Holder in conjunction with joint ventures, strategic partnerships or licenses approved by the Majority Investors; and (x) Company Securities issuable upon conversion or exercise of any Convertible Securities outstanding as of the date of this Agreement.

“Fair Market Value” has the meaning specified in Section C.11(b).

“Family Member” means, as applied to any individual, such individual's spouse, child (including a stepchild or an adopted child), grandchildren, parent, brother or sister or any spouse of any of the foregoing, and each trust or partnership created for the exclusive benefit of any one or more of them.

“FBCA” means the Florida Business Corporation Act, as in effect from time to time.

“Fully Diluted Basis” means at any time the sum of (x) the number of issued and outstanding shares of Common Stock at such time, whether or not vested, plus (y) the total number of shares of Common Stock issuable upon the exercise or conversion of all Convertible Securities issued and outstanding at such time.

“Holder Redemption Notice” has the meaning specified in Section C.11(a).

“HSR Act” has the meaning specified in Article III, Section B.6.

“Junior Securities.” With respect to Series C Preferred Stock, “Junior Securities” shall mean Series A Preferred Stock, Series B Preferred Stock, any of the Corporation’s Common Stock, other Capital Securities, and Convertible Securities of the Corporation other than those that by their terms state that they are not junior in preference to the Series C Preferred Stock or provide the holders thereof with rights *pari passu* with, or senior to, those of the holders of Series C Preferred Stock. With respect to Series A Preferred Stock, “Junior Securities” shall mean Series B Preferred Stock and any of the Corporation’s Common Stock and all other Capital Securities and Convertible Securities of the Corporation other than those that by their terms, state that they are not Junior Securities or provide the holders thereof with rights *pari passu* with, or senior to, those of the holders of Series A Preferred Stock.

“Liquidation Event” has the meaning specified in Article III, Section C.2(a).

“Majority Investors” means, at any time, those Investors holding Company Securities which would constitute sixty percent (60%) of the Common Stock on a Fully Diluted Basis.

“Optional Redemption” has the meaning specified in Article III, Section C.11(a).

“Person” or “person” means an individual, partnership, corporation, limited liability company, association, trust, joint venture, unincorporated organization or other entity and any government, governmental department or agency or political subdivision thereof.

“Preference Payment” has the meaning specified in Article III, Section C.4(e).

“Public Offering” means any offering by the Corporation of its Common Stock to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, or any comparable statement under any similar federal statute then in force, other than an offering of shares being issued as consideration in a business acquisition or combination or an offering in connection with an employee benefit plan.

“Qualified Public Offering” has the meaning specified in Article III, Section C.3(b).

“Redemption Notice” has the meaning specified in Article III, Section C.11(a).

“Required Consents” has the meaning specified in Article III, Section B.6.

“Requisite Percentage Holders” has the meanings Section C.11(b).

“Requisite Series A Stockholders” means the holders of more than sixty percent (60%) of the issued and outstanding Series A Preferred Stock.

“Requisite Series C Stockholders” means the holders of more than fifty percent (50%) of the issued and outstanding Series C Preferred Stock.

"Sale of the Corporation" means any of the following: (a) a merger or consolidation of the Corporation into or with any other Person or Persons who are not Affiliates of the Corporation in a single transaction or a series of transactions, whether or not such transactions are related, in which the stockholders of the Corporation immediately prior to such merger, consolidation, transaction or first of such series of transaction possess less than a majority of the Corporation's issued and outstanding voting Capital Securities immediately after such merger, consolidation, transaction or series of such transactions (*provided* that a Qualified Public Offering having such an effect shall not be a "Sale of the Corporation"); or (b) a single transaction or series of transactions, whether or not such transactions are related, pursuant to which a Person or Persons who are not Affiliates of the Corporation acquire all or substantially all of the Corporation's assets determined on a consolidated basis.

"Series A Director Designee" has the meaning specified in the Amended and Restated Stockholders Agreement.

"Series C Director Designee" has the meaning specified in the Amended and Restated Stockholders Agreement.

"Series A Liquidation Preference" has the meaning specified in Article III, Section C.1(a).

"Series C Liquidation Preference" means two (2) times the Series C Purchase Price.

"Series A Maturity Date" means March 31, 2012.

"Series C Maturity Date" means March 31, 2012.

"Series A Preferred Dividends" has the meaning specified in Article III, Section C.1(a).

"Series A Preferred Stock" has the meaning specified in Article III of the Charter.

"Series C Preferred Stock" has the meaning specified in Article III of the Charter.

"Series A Preferred Stock Conversion Price" shall initially be \$0.55.

"Series C Preferred Stock Conversion Price" shall initially be \$0.55.

"Series A Purchase Price" means One U.S. dollar (\$1.00) per share of Series A Preferred Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving the Series A Preferred Stock after the Effective Time).

"Series C Purchase Price" means One U.S. dollar (\$1.00) per share of Series C Preferred Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving the Series C Preferred Stock after the Effective Time).

"Stockholders Agreement" means that certain Stockholders Agreement among the Corporation and certain of its stockholders, to be dated as of January 25, 2005, as amended from time to time.

"Subsidiary"/"Subsidiaries" means any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of

directors thereof is at the time owned or controlled, directly or indirectly, by the Corporation or one or more of the other Subsidiaries of the Corporation or a combination thereof, or (ii) if a partnership, limited liability company, association or other business entity, a majority of the ownership interests therein is at the time owned or controlled, directly or indirectly, by the Corporation or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, the Corporation shall be deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if the Corporation shall be allocated a majority of partnership, limited liability company, association or other business entity gains or losses or shall be or control the managing general partner of such partnership, association or other business entity or the managing member of such limited liability company.

“Voluntary Conversion Notice” has the meaning specified in Article III, Section C.3(c).

“Warrants” shall mean Common Stock Purchase Warrants in the form provided for in the applicable Securities Purchase Agreement between the Corporation and the initial purchasers of the applicable shares of Series A Preferred Stock.

ARTICLE V. ADDRESS

The principal address of the Corporation is 2103 Coral Way, Suite 202, Miami, Florida 33145. The Board of Directors may, from time to time, change the street and post office address of the Corporation as well as the location of its principal office.

The street address of the registered office of the corporation is 2103 Coral Way, Suite 202, Miami, Florida 33145 and the name of the registered agent of the corporation at that address is William R. Burdette.

ARTICLE VI. TERM OF EXISTENCE

This Corporation is to exist perpetually.

ARTICLE VII. INDEMNIFICATION

A. The Corporation shall to the fullest extent permitted by law indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise.

B. The Corporation may pay in advance any expenses (including attorneys' fees) that may become subject to indemnification under paragraph A above if the person receiving the advance payment of expenses undertakes in writing to repay such payment if it is ultimately determined that such person is not entitled to indemnification by the Corporation under paragraph A above.

C. The indemnification provided by paragraph A above shall not be exclusive of any other rights to which a person may be entitled by law, bylaw, agreement, vote or consent of stockholders or directors, or otherwise.

D. The indemnification and advance payment provided by paragraphs A and B above shall continue as to a person who has ceased to hold a position named in paragraph A above and shall inure to such person's heirs, executors, and administrators.

E. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or who serves or served at the Corporation's request as a director, officer, employee, agent, partner, or trustee of another Corporation or of a partnership, joint venture, trust, or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have power to indemnify such person against such liability under paragraph A above.

F. If any provision in this Article shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and, to the extent possible, effect shall be given to the intent manifested by the provision held invalid, illegal, or unenforceable.

ARTICLE VIII. CERTAIN LIMITATIONS ON LIABILITY OF DIRECTORS

Except to the extent that the Act prohibits the elimination or limitation of liability of directors for breach of the duties of a director, no director of the Corporation shall have any personal liability for monetary damages for any statement, vote, decision, or failure to act, regarding corporate management or policy. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

ARTICLE IX. SHAREHOLDER QUORUM AND VOTING

The shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders than is required by the Act, provided, however, that the adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

ARTICLE X. AMENDMENTS

The Corporation reserves the right, subject to the written consent of the Majority Investors, to amend, alter or repeal any provisions contained in these Amended and Restated Articles of Incorporation from time to time and at any time in the manner now or hereafter prescribed in these Amended and Restated Articles of Incorporation and by the laws of the State of Florida, and all rights herein conferred upon shareholders are granted subject to such reservation. Notwithstanding the above, the Corporation shall not amend, alter or repeal any provisions contained in these Amended and Restated Articles of Incorporation, which would impact the rights or obligations of the holders of Series A Preferred Stock, unless the Corporation first obtains the written consent of the then current holders of the majority of the outstanding Series A Preferred Stock. Likewise, the Corporation shall not amend, alter or repeal any provisions contained in these Amended and Restated Articles of Incorporation, which would impact the

rights or obligations of the holders of Series C Preferred Stock, unless the Corporation first obtains the written consent of the then current holders of the majority of the outstanding Series C Preferred Stock.

ARTICLE XI. MISCELLANEOUS

In furtherance and not in limitation of the powers conferred by the laws of the State of Florida:

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

B. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Florida as the Bylaws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

D. Meetings of the shareholders may be held within or without the State of Florida, as the Bylaws may provide.

ARTICLE XII. Corporate Officers & Directors

The officers of the Corporation are as follows:

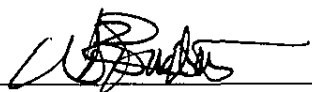
William R. Burdette	Chief Executive Officer & Secretary
Kimberly West Weeks	President & Chief Marketing Officer
Gaspar Ferreiro	Vice President - Chief Technology Officer
Alexandra Esher	Vice President
Bruce Hinkle	Executive Vice President - Sales
Barbara Hinkle	Vice President - Client Relations

The directors of the Corporation are as follows:

William R. Burdette	Chairman
Richard D. Field	
Joe Byrne	
Matthew Blejwas	
Thomas P. Krasner	

I, William R. Burdette, Chief Executive Officer of the Corporation, for the purpose of amending and restating the Corporation's Articles of Incorporation pursuant to the Act, do make this certificate, hereby declaring and certifying that these Amended and Restated Articles of Incorporation were adopted by the Board of Directors and approved by all of the Shareholders of the Corporation and that this is my act and deed on behalf of the Corporation, and the facts herein stated are true as of February 16, 2010.

INSTITUTIONAL DEPOSITS CORP.

By: 
William R. Burdette, CEO