

840954

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP ☐ WAIT ☐ MAIL

(Business Entity Name)

(Document Number)

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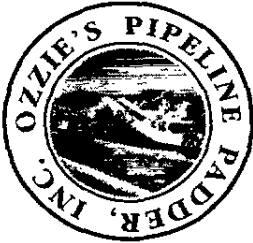
03/30/05--01010--010 **185.00

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

05 MAR 28 AM 10:36

FILED

3/30/05
NIC Amend
zg



7520 East Adobe Drive • Scottsdale, Arizona 85255

Phone (480) 585-9400 • Office Fax (480) 585-7977 • Shop Fax (480) 585-7939

March 18, 2005

State of Florida
Division of Corporations
P. O. Box 1500
Tallahassee, FL 32302-1500

RE: CERTIFICATE OF AMENDMENT – ANNUAL REPORT
CERTIFICATE OF AMENDMENT – NAME CHANGE

Please find enclosed the above mentioned documents.
Feel free to call with any questions, my direct line (480) 606-0216.

Sincerely,
Ozzies Pipeline Padder, Inc.

Veronica Sanchez
Administrative Assistant

RECEIVED
05 MAR 28 AM 9:52
DIVISION OF CORPORATIONS

TRANSMITTAL LETTER

TO: Amendment Section
Division of Corporations

SUBJECT: OZZIE'S PADDER OF NORTH AMERICA, INC.
(Name of corporation)

DOCUMENT NUMBER: 840954

The enclosed Amendment and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

STEVEN VUCUREVICH
(Name of person)

OZZIE'S PIPELINE PADDER, INC.
(Name of firm/company)

7520 E. ADOBE DRIVE
(Address)

SCOTTSDALE, AZ 85255
(City/state and zip code)

For further information concerning this matter, please call:

STEVEN VUCUREVICH at (480) 585-9400
(Name of person) (Area code & daytime telephone number)

Enclosed is a check for the following amount:

- | | | | |
|--|---|--|---|
| <input checked="" type="checkbox"/> \$35.00 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee & Certificate of Status | <input type="checkbox"/> \$43.75 Filing Fee & Certified Copy (Additional copy is enclosed) | <input type="checkbox"/> \$52.50 Filing Fee, Certificate of Status & Certified Copy (Additional copy is enclosed) |
|--|---|--|---|

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

Street Address:
Amendment Section
Division of Corporations
409 E. Gaines Street
Tallahassee, FL 32399

PROFIT CORPORATION
APPLICATION BY FOREIGN PROFIT CORPORATION TO FILE AMENDMENT TO
APPLICATION FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA
(Pursuant to s. 607.1504, F.S.)

SECTION I
(1-3 MUST BE COMPLETED)

840954
(Document number of corporation (if known))

1. OZZIE'S PADDER OF NORTH AMERICA, INC
(Name of corporation as it appears on the records of the Department of State)

2. MISSISSIPPI 3. 6/26/1978
(Incorporated under laws of) (Date authorized to do business in Florida)

SECTION II
(4-7 COMPLETE ONLY THE APPLICABLE CHANGES)

4. If the amendment changes the name of the corporation, when was the change effected under the laws of its jurisdiction of incorporation? MISSISSIPPI on 1/1/2005

5. OZZIE'S PIPELINE PADDER, INC.
(Name of corporation after the amendment, adding suffix "corporation," "company," or "incorporated," or appropriate abbreviation, if not contained in new name of the corporation)

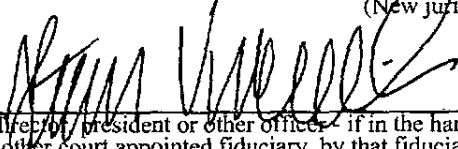
(If new name is unavailable in Florida, enter alternate corporate name adopted for the purpose of transacting business in Florida)

6. If the amendment changes the period of duration, indicate new period of duration.

no change
(New duration)

7. If the amendment changes the jurisdiction of incorporation, indicate new jurisdiction.

no change
(New jurisdiction)


(Signature of a director, president or other officer, if in the hands of a receiver or other court appointed fiduciary, by that fiduciary)

STEVEN VUCUREVICH
(Typed or printed name of person signing)

3/2/05
(Date)

SEC./TREAS.
(Title of person signing)

FILED
05 MAR 28 AM 10:36
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

State of Mississippi

Office of the Secretary of State

Eric Clark, Secretary of State
Jackson, Mississippi

CERTIFICATE

I, ERIC CLARK, Secretary of State of the State of Mississippi, and as such, the legal custodian of the corporate records, required by the laws of Mississippi, to be filed in my office, do hereby certify:

That on May 29, 1978, the State of Mississippi issued a Charter/Certificate of Authority to:

OZZIE'S PIPELINE PADDER, INC.

That the state of incorporation is MISSISSIPPI.

That the period of duration is 99 years.

That according to the records of this office, Articles of Dissolution or a Certificate of Withdrawal have not been filed.

That according to the records of this office, a current Annual Report has been delivered to the Office of the Secretary of State.

I further certify that all fees, taxes and penalties owed to this state, as reflected in the records of the Secretary of State, have been paid and that the corporation is in existence or has authority to transact business in Mississippi.



Given under my hand
and seal of office
February 14, 2005

A handwritten signature in cursive script that reads "Eric Clark".

ERIC CLARK
Secretary of State

State of Mississippi

Secretary of State's Office

Eric Clark

Secretary of State
Jackson, Mississippi

OZZIE'S PIPELINE PADDER, INC.

Business ID: 614236

The attached 18 pages are true and correct copies of documents filed in the Mississippi Secretary of State's Office pursuant to the Mississippi Code of 1972 Annotated.

This the 23rd day of February, 2005.



SECRETARY OF STATE

P.O. Box 136

Jackson, MS 39205

(601) 359-1633

A handwritten signature in cursive script that reads "Eric Clark".

Eric Clark

Secretary of State

P.O. BOX 136, JACKSON, MS 39205-0136 (601) 359-1333

Articles of Amendment



The undersigned persons, pursuant to Section 79-4-10.06 (if a profit corporation) or Section 79-11-305 (if a nonprofit corporation) of the Mississippi Code of 1972, hereby execute the following document and set forth:

1. Type of Corporation

☒

Profit

☐

Nonprofit

2. Name of Corporation

Ozzie's Padder of North America, Inc.

3. The future effective date is
(Complete if applicable)

4. Set forth the text of each amendment adopted. (Attach page)

5. If an amendment for a business corporation provides for an exchange, reclassification, or cancellation of issued shares, set forth the provisions for implementing the amendment if they are not contained in the amendment itself. (Attach page)

6. The amendment(s) was (were) adopted on

December 27, 2004

Date(s)

FOR PROFIT CORPORATION (Check the appropriate box)

Adopted by

☐

the incorporators

☐directors without shareholder action and
shareholder action was not required.

FOR NONPROFIT CORPORATION (Check the appropriate box)

Adopted by

☐

the incorporators

☐board of directors without member action and
member action was not required.

FOR PROFIT CORPORATION

7. If the amendment was approved by shareholders

(a) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and the number of votes of each voting group indisputably represented at the meeting were

Designation	No. of outstanding shares	No. of votes entitled to be cast	No. of votes indisputably represented
Common	290	290	290

Articles of Amendment



--	--	--	--

(b) EITHER

(i) the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment was

Voting group	Total no. of votes cast FOR	Total no. of votes cast AGAINST

OR

(ii) the total number of undisputed votes cast for the amendment by each voting group was

Voting group	Total no. of undisputed votes cast FOR the plan
Common	290

and the number of votes cast for the amendment by each voting group was sufficient for approval by that voting group.

FOR NONPROFIT CORPORATION

8. If the amendment was approved by the members

(a) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and the number of votes of each class indisputably represented at the meeting were

Designation	No. of memberships outstanding	No. of votes entitled to be cast	No. of votes indisputably represented

F0012 - Page 3 of 3

OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
P.O. BOX 136, JACKSON, MS 39205-0136 (601) 359-1333
Articles of Amendment

(b) EITHER

(i) the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment was

Voting class	Total no. of votes cast FOR	Total no. of votes cast AGAINST


OR

(ii) the total number of undisputed votes cast for the amendment by each class was

Voting class	Total no. of undisputed votes cast FOR the amendment

and the number of votes cast for the amendment by each voting group was sufficient for approval by that voting group.

By: Signature



(Please keep writing within blocks)

Printed Name

Robert R. Dunstan

Title

President

**ATTACHMENT TO
ARTICLES OF AMENDMENT OF
OZZIE'S PADDER OF NORTH AMERICA, INC.**

The First Article of the Articles of Incorporation is hereby amended in its entirety to read as follows:

"FIRST: The name of the corporation is "Ozzie's Pipeline Padder, Inc."

The Fourth Article of the Articles of Incorporation is hereby amended in its entirety to read as follows:

"FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is 8,000,000 of which (i) 2,000,000 shares shall be preferred stock, par value \$.01 per share (the "Preferred Stock"), and (ii) 6,000,000 shares shall be common stock, par value \$.01 per share (the "Common Stock").

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

A. SERIES A CONVERTIBLE PREFERRED STOCK

1. **Designation.** A total of 2,000,000 shares of the Corporation's Preferred Stock shall be designated as a series known as Series A Convertible Preferred Stock, par value \$.01 per share (the "Series A Preferred Stock").

2. **Voting.** Each outstanding share of Series A Preferred Stock shall be entitled to a number of votes equal to the greatest number of whole shares of Common Stock into which such share of Series A Preferred Stock is then convertible pursuant to Section A.6 hereof as of the record date for the vote or written consent of stockholders, if applicable. Each holder of shares of Series A Preferred Stock shall be entitled to notice of any stockholder's meeting in accordance with the bylaws of the Corporation and shall vote with holders of the Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders, excluding those matters required to be submitted to a class or series vote pursuant to the terms hereof (including, without limitation, Section A.8) or by law.

3. **Dividends.** The holders of shares of Series A Preferred Stock shall be entitled to receive on June 30, 2001 (the "Dividend Date") and each anniversary of the Dividend Date out of funds legally available therefor, cumulative dividends at the rate of 7% of the Original Issuance Price (as defined below) on each outstanding share of Series A Preferred Stock per annum (as adjusted for subsequent stock dividends, stock splits, combinations, recapitalizations or the like with respect to such share) from the date of original issuance of such share (the "Closing Date"), which dividends shall accrue daily in arrears and be compounded annually whether or not such dividends are declared by the Board of Directors. Such dividends, if

declared by the Board of Directors, shall be payable on the Dividend Date and each anniversary of the Dividend Date immediately following such declaration. At the Corporation's option, the Corporation may pay all or a portion of the annual dividends payable on the Series A Preferred Stock in additional shares of Series A Preferred Stock. The number of shares of Series A Preferred Stock payable as a dividend shall be determined by dividing the aggregate amount of dividends that the Corporation has elected to pay on a given anniversary date to the Series A Preferred Stock holders in additional shares of Series A Preferred Stock by the Original Issue Price. The amount of Series A Preferred Stock payable as a dividend shall be distributed to the holders of Series A Preferred Stock pro rata based on the number of shares of Series A Preferred Stock held by each.

4. Liquidation; Merger, etc.

(a) Series A Liquidation Preference. Upon any liquidation, dissolution or winding up of the Corporation and its subsidiaries, whether voluntary or involuntary (a "Liquidation Event"), each holder of outstanding shares of Series A Preferred Stock shall be entitled to be paid in cash, before any amount shall be paid or distributed to the holders of the Common Stock or any other capital stock ranking on liquidation junior to the Series A Preferred Stock (the Common Stock and such other capital stock being referred to collectively as, "Junior Stock"), an amount per share of Series A Preferred Stock equal to \$10.00 per share (the "Original Issue Price") plus any accrued but unpaid dividends on such shares of Series A Preferred Stock (such amount to be adjusted appropriately for stock splits, stock dividends, recapitalizations and the like) (the "Series A Preference Amount"). If the amounts available for distribution by the Corporation to holders of Series A Preferred Stock upon a Liquidation Event are not sufficient to pay the aggregate Series A Preference Amount due to such holders, such holders shall share ratably in any distribution in connection with such Liquidation Event in proportion to the full respective preferential amounts to which they are entitled.

(b) Remaining Assets. After the payment of all preferential amounts required to be paid to the holders of the Series A Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Series A Preferred Stock, the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Junior Stock then outstanding.

(c) Amount Payable in Mergers, etc. Subject to Section A.7(e), each of the following shall be deemed to be a Liquidation Event: (i) any merger or consolidation of the Corporation into or with another corporation (except one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least a majority of the voting power of the capital stock of the surviving corporation), (ii) any sale of all or substantially all of the assets of the Corporation, or (iii) any other transaction pursuant to or as a result of which a single person (or group of affiliated persons) acquires or holds capital stock of the Corporation representing a majority of the Corporation's outstanding voting power (a "Change of Control Transaction"). All consideration payable to the stockholders of the Corporation in connection with any such merger, consolidation, asset sale or Change of Control Transaction, or all consideration payable to the Corporation and distributable to its stockholders, together with all other available assets of the Corporation (net of obligations owed by the

Corporation), in connection with any such asset sale, shall be paid or distributed, as applicable, to the holders of capital stock of the Corporation in accordance with the preferences and priorities set forth in Sections A.4(a) and A.4(b) above, with such preferences and priorities specifically intended to be applicable in any such merger, consolidation, asset sale, or Change of Control Transaction as if such transaction were a Liquidation Event. The Corporation shall promptly provide to the holders of shares of Series A Preferred Stock such information concerning the terms of such merger, consolidation, asset sale, or Change of Control Transaction and the value of the assets of the Corporation as may reasonably be requested by the holders of Series A Preferred Stock. If applicable, the Corporation shall cause the definitive agreement relating to such merger, consolidation, asset sale or Change of Control Transaction to provide for the redemption of outstanding shares of Series A Preferred Stock on a basis which gives effect to the provisions of this Section A.4. Notwithstanding anything to the contrary contained herein, each holder of shares of Series A Preferred Stock shall have the right to elect to give effect to the conversion rights contained in Section A.6 instead of giving effect to the provisions contained in this Section A.4(c) with respect to the shares of Series A Preferred Stock owned by such holder.

5. Redemption.

(a) Time Based Redemption.

(i) At any time on or after the fifth anniversary of the Closing Date, the holder(s) of the majority of the voting power of the outstanding shares of Series A Preferred Stock (a "Majority Interest") may elect, by delivering written notice to the Corporation and each of the other holders of Series A Preferred Stock not less than fifteen (15) days prior to the elected redemption date, to have up to 33 1/3% of the outstanding shares of Series A Preferred Stock held by each holder redeemed. In such event, the Corporation shall redeem that percentage (the "Redemption Percentage") of Series A Preferred Stock that the Majority Interest has requested for an amount equal to the Series A Redemption Price (as defined below) per share specified in Section A.5(b). Upon such election, each holder of Series A Preferred Stock shall be deemed to have elected to have a percentage equal to the Redemption Percentage of its Series A Preferred Stock redeemed pursuant to this Section A.5(a)(i).

(ii) At any time on or after the sixth anniversary of the Closing Date, the holder(s) of the Majority Interest may elect, by delivering written notice to the Corporation and each of the other holders of Series A Preferred Stock not less than fifteen (15) days prior to the elected redemption date, to have a percentage (the "Second Redemption Percentage") of the outstanding shares of Series A Preferred Stock that would, when combined with any prior redemption, result in the redemption by the Corporation of not more than 66 2/3% of the shares of Series A Preferred Stock outstanding as of the fifth anniversary of the Closing Date. In such event, the Corporation shall redeem a percentage equal to the Second Redemption Percentage of Series A Preferred Stock for an amount equal to the Series A Redemption Price (as defined below) per share specified in Section A.5(b). Upon such election, each holder of Series A Preferred Stock shall be deemed to have elected to have a percentage equal to the Second Redemption Percentage of their Series A Preferred Stock redeemed pursuant to this Section A.5(a)(ii).

(iii) At any time on or after the seventh anniversary of the Closing Date, the holder(s) of the Majority Interest may elect, by delivering written notice to the Corporation and each of the other holders of Series A Preferred Stock not less than fifteen (15) days prior to the elected redemption date, to have 100% of the outstanding shares of Series A Preferred Stock held by each holder redeemed. In such event, the Corporation shall redeem all of the outstanding shares of Series A Preferred Stock for an amount equal to the Series A Redemption Price per share specified in Section A.5(b). Upon such election, all holders of Series A Preferred Stock shall be deemed to have elected to have 100% of their shares of Series A Preferred Stock redeemed pursuant to this Section A.5(a)(iii).

(iv) Notwithstanding anything to the contrary contained herein, each holder of shares of Series A Preferred Stock shall have the right to give effect to the conversion rights contained in Section A.6 instead of giving effect to the provisions contained in this Section A.5(a) with respect to the shares of Series A Preferred Stock held by such holder.

(b) Redemption Price. The price for each share of Series A Preferred Stock redeemed pursuant to this Section A.5 shall be an amount equal to the Original Issue Price plus any accrued but unpaid dividends on such share of Series A Preferred Stock (such amount to be adjusted appropriately for stock splits, stock dividends, recapitalizations and the like). The aggregate Series A Redemption Price shall be payable in cash in immediately available funds to the respective holders of the Series A Preferred Stock on the applicable redemption date.

(c) Insufficient Funds. If the funds of the Corporation legally available to redeem shares of Series A Preferred Stock on the Series A redemption date are insufficient to redeem the total number of such shares required to be redeemed on such date, the Corporation shall (i) take any action necessary or appropriate, to the extent reasonably within its control, to remove promptly any impediments to its ability to redeem the total number of shares of Series A Preferred Stock required to be so redeemed, including, without limitation, (A) to the extent permissible under applicable law causing a revaluation of the assets of the Corporation under Section 154 of the Delaware General Corporation Law to make such redemption and (B) incurring any indebtedness necessary to make such redemption, provided that the amount of such indebtedness does not exceed two (2) multiplied by the average of the earnings of the Corporation before interest, taxes, depreciation and amortization (as calculated in accordance with generally accepted accounting principles ("GAAP")) for the trailing four (4) quarters, and (ii) in any event, use any funds that are legally available to redeem the maximum possible number of such shares from the holders of such shares to be redeemed in proportion to the respective number of such shares that otherwise would have been redeemed if all such shares had been redeemed in full. At any time thereafter when additional funds of the Corporation are legally available to redeem such shares of Series A Preferred Stock, the Corporation shall immediately use such funds to redeem the balance of the shares that the Corporation became obligated to redeem on the applicable redemption date (but which it has not yet redeemed) at the Series A Redemption Price.

(d) Interest. If any shares of Series A Preferred Stock are not redeemed pursuant to this Section A.5 following notice by a Majority Interest and continue to be outstanding on an applicable redemption date, and the Corporation shall pay interest on the Series A Redemption

Price applicable to such unredeemed shares at an aggregate per annum rate equal to twelve percent (12%), with such interest to accrue daily in arrears and to be compounded quarterly; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "Maximum Permitted Rate"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the amount of interest required to be paid hereunder shall automatically be reduced to eliminate such excess; provided, however, that any subsequent increase in the Maximum Permitted Rate shall be retroactively effective to the applicable redemption date to the extent permitted by law.

(e) Dividend After Redemption Date. In the event that shares of Series A Preferred Stock required to be redeemed are not redeemed pursuant to Section A.5 following notice by a Majority Interest and continue to be outstanding on an applicable redemption date, such shares shall no longer be entitled to the dividends set forth in Section A.3 and the holders shall, without limiting any other rights and preferences to which it is entitled hereunder, only be entitled to the Series A Redemption Price applicable to such unredeemed shares and interest thereon as provided in Section A.5(d) until the date on which the Corporation actually redeems such shares.

(f) Surrender of Certificates. Each holder of shares of Series A Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or, in the event the certificate or certificates are lost, stolen or missing, shall deliver an affidavit of loss, at the principal executive office of the Corporation or such other place as the Corporation may from time to time designate by notice to the holders of Series A Preferred Stock, and each surrendered certificate shall be canceled and retired and the Corporation shall thereafter make payment of the applicable Series A Redemption Price by certified check or wire transfer; provided, however, that if the Corporation has insufficient funds legally available to redeem all shares of Series A Preferred Stock required to be redeemed, each such holder shall, in addition to receiving the payment of the portion of the aggregate Series A Redemption Price that the Corporation is not legally prohibited from paying to such holder by certified check or wire transfer, receive a new stock certificate for those shares of Series A Preferred Stock not so redeemed.

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

(a) Voluntary Conversion. The holders of shares of Series A Preferred Stock may convert such shares into Common Stock at any time after the date of issuance of such shares of Series A Preferred Stock, as follows:

(i) At the option of the holder thereof and without payment of any additional consideration, each outstanding share of Series A Preferred Stock held by such holder shall be converted into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (A) the Original Issue Price plus any accrued but unpaid dividends on such share of Series A Preferred Stock by (B) the Conversion Price at the time in effect for such Series A Preferred Stock (the "Conversion Rate"). The initial "Conversion Price" per share for

shares of Series A Preferred Stock shall be the Original Issue Price, subject to adjustment as set forth in Section A.7.

(ii) Upon the written election of a Majority Interest and without the payment of any additional consideration, all (but not less than all) of the outstanding shares of Series A Preferred Stock shall be converted into fully paid and nonassessable shares of Common Stock at the Conversion Rate. Upon such election, all holders of the Series A Preferred Stock shall be deemed to have elected to voluntarily convert all outstanding shares of Series A Preferred Stock into shares of Common Stock pursuant to this Section A.6(a)(ii).

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted, without the payment of any additional consideration, into fully paid and nonassessable shares of Common Stock at the Conversion Rate as of, and in all cases subject to, the closing of the Corporation's first underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), provided that (i) such registration statement covers the offer and sale of Common Stock of which the aggregate gross proceeds attributable to sales for the account of the Corporation exceed \$25,000,000, at a price per share equal to at least the product of the Original Issue Price multiplied by two (2) (appropriately adjusted for any stock split, combination, reorganization, recapitalization, stock dividend, or similar event) and (ii) such Common Stock is listed for trading on either the New York Stock Exchange or the NASDAQ National Market (a "QPO"); provided that if a closing of a QPO occurs, all outstanding shares of Series A Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior to such closing.

(c) Procedure for Conversion.

(i) Voluntary Conversion. Upon election to convert pursuant to Section A.6(a)(i) or (ii), the relevant holder of Series A Preferred Stock shall surrender the certificate or certificates representing the Series A Preferred Stock being converted to the Corporation, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or shall deliver an affidavit of loss to the Corporation, at its principal executive office or such other place as the Corporation may from time to time designate by notice to the holders of the Series A Preferred Stock. Upon surrender of such certificate(s) or delivery of an affidavit of loss, the Corporation shall issue and send by hand delivery, by courier or by first class mail (postage prepaid) to the holder thereof or to such holder's designee, at the address designated by such holder, certificates for the number of shares of Common Stock to which such holder shall be entitled upon conversion. The issuance of certificates for Common Stock upon conversion of Series A Preferred Stock shall be deemed effective as of the date of surrender of such Series A Preferred Stock certificates or delivery of such affidavit of loss and 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.

(ii) Automatic Conversion. As of the closing of a QPO (the "Automatic Conversion Date"), all outstanding shares of Series A Preferred Stock shall be converted into

shares of Common Stock without any further action by the holders of such shares and whether or not the certificates representing such shares of Series A Preferred Stock are surrendered to the Corporation. On the Automatic Conversion Date, all rights with respect to the Series A Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an affidavit of loss thereof to receive certificates for the number of shares of Common Stock into which such shares of Series A Preferred Stock have been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. Upon surrender of such certificates or affidavit of loss, the Corporation shall issue and deliver to such holder, promptly (and in any event in such time as is sufficient to enable such holder to participate in such QPO) at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series A Preferred Stock surrendered are convertible on the Automatic Conversion Date.

(d) 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 shares of Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of 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 outstanding shares of Series A Preferred Stock, the Corporation will take such corporate action as may be necessary to increase the number of its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, and to reserve the appropriate number of shares of Common Stock for issuance upon such conversion.

(e) 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.

7. Adjustments.

(a) Adjustments to the Conversion Price. Except as provided in Section A.7(b) and except in the case of an event described in Section A.7(c), if and whenever after the Closing Date the Corporation shall issue or sell, or is, in accordance with this Section A.7(a), deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issuance or sale, then, upon such issuance or sale (or deemed issuance or sale), the Conversion Price shall be reduced to the price determined by dividing (i) an amount equal to the sum of (A) the number of shares of Common Stock outstanding immediately prior to such issuance or sale (or deemed issuance or sale) multiplied by the then existing Conversion Price and (B) the consideration, if any, received by the Corporation upon such issuance or sale (or deemed issuance or sale) by (ii) the total number of shares of Common Stock outstanding immediately prior to such issuance or sale (or deemed issuance or sale) plus the number of shares of Common Stock so issued or sold (or so deemed issued or sold). For purposes of calculating adjustments to the Conversion Price pursuant to this

Section 7, the number of shares of Common Stock outstanding shall be the sum of (x) the number of shares of Common Stock actually outstanding, (y) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (z) the number of shares of Common Stock which could be obtained through the exercise or conversion of all rights, options and convertible securities outstanding on the day immediately preceding the given date; provided, however, that any such calculation of the number of shares of Common Stock outstanding shall be made on the same basis as when calculating fully diluted earnings per share in accordance with GAAP.

For purposes of this Section A.7(a), the following shall also be applicable:

(i) Issuance of Rights or Options. If the Corporation shall, at any time after the Closing Date, in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities"), in each case for consideration per share (determined, as provided in this paragraph and in Section A.7(a)(vi)) less than the Conversion Price, whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options, or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon exercise of such Options, shall be deemed to have been issued as of the date of granting of such Options (and thereafter shall be deemed to be outstanding), at a price per share equal to the amount determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock deemed to have been so issued. Except as otherwise provided in Section A.7(a)(iii), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Corporation shall, at any time after the Closing Date, in any manner issue or sell any Convertible Securities for consideration per share (determined as provided in this paragraph and in Section A.7(a)(vi)) less than the Conversion Price, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued, as of the date of the issue or sale of such Convertible Securities (and thereafter shall be deemed to be outstanding), at a price per share equal to the amount determined by dividing (A) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of

additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock deemed to have been so issued; provided, that (1) except as otherwise provided in Section A.7(a)(iii), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (2) if any such issue of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities, no further adjustment of the Conversion Price shall be made by reason of such issue.

(iii) Change in Option Price or Conversion Rate. If there shall occur a change in (A) the maximum number of shares of Common Stock issuable in connection with any Option referred to in Section A.7(a)(i) or any Convertible Securities referred to in Section A.7(a)(i) or (ii), (B) the purchase price provided for in any Option referred to in Section A.7(a)(i), (C) the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section A.7(a)(i) or (ii) or (D) the rate at which Convertible Securities referred to in Section A.7(a)(i) or (ii) are convertible into or exchangeable for Common Stock (in each case, other than in connection with an event described in Section A.7(b)), then the Conversion Price in effect at the time of such event shall be readjusted to the Conversion Price that would have been in effect at such time had such Options or Convertible Securities that are still outstanding provided for such changed maximum number of shares, purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; provided that if such adjustment to the Conversion Price results in an increase in the Conversion Price, such increase shall not exceed the Conversion Price in effect as if such Options or Convertible Securities had never been issued; and provided, further, that (1) except as otherwise provided herein, no additional adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (2) if any such issue of such Convertible Securities is made upon the exercise of any Options to purchase any such Convertible Securities, no further adjustment of the Conversion Price shall be made by reason of such issue. Upon the termination of any such Option or any such right to convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder shall be increased to the Conversion Price that would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination (i.e., to the extent that fewer than the number of shares of Common Stock deemed to have been issued in connection with such Option or Convertible Securities were actually issued), never been issued or issued at such higher price, as the case may be. The changes to the Conversion Price set forth in this Section 7(a)(iii) shall not apply to any shares of Series A Preferred Stock that have, as of the date of the change, been previously converted into shares of Common Stock.

(iv) Stock Dividends. If the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock, (except for dividends or distributions upon the Common Stock), Options or Convertible Securities, any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration, and the Conversion Price will be adjusted pursuant to this Section A.7(a)(iv); provided, that no adjustment shall be made to the Conversion Price as a result of such dividend or distribution if the holders of the shares of Series A Preferred Stock are entitled to, and do, receive such

dividend or distribution in accordance with Section A.3; provided, further, that if any adjustment is made to the Conversion Price as a result of the declaration of a dividend and such dividend is not effected, the Conversion Price shall be readjusted as if such dividend was never declared; and provided, further, that (1) except as otherwise provided in Section A.7(a)(iii), no additional adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or Convertible Securities and (2) if any such issue of Convertible Securities is made upon the exercise of any Options to purchase any such Convertible Securities, no further adjustment of the Conversion Price shall be made by reason of such issue.

(v) Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Closing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of the Series A Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had the Series A Preferred Stock been converted into Common Stock on the date of such event to and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them during such period giving application to all adjustments called for during such period under Section A.7 with respect to the rights of the holders of the Series A Preferred Stock; and, provided, further, however, that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

(vi) Consideration for Stock. In case any shares of Common Stock shall be issued or sold, or deemed issued or sold, for cash, the consideration received therefor shall be deemed to be the amount received or to be received by the Corporation therefor (determined with respect to deemed issuances and sales in connection with Options and Convertible Securities in accordance with clause (A) of Section A.7(a)(i) or (ii), as appropriate. In case any shares of Common Stock shall be issued or sold, or deemed issued or sold, for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration received or to be received by the Corporation (determined with respect to deemed issuances and sales in connection with Options and Convertible Securities in accordance with clause (A) of Section A.7(a)(i) or (ii) as appropriate) as determined in good faith by the Board of Directors of the Corporation. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

(vii) Record Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be

deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(viii) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation; provided, that the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this Section A.7.

(b) Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price in the case of the issuance from and after the Closing Date of (i) shares of Common Stock upon conversion of shares of Series A Preferred Stock; (ii) such number of shares (as determined by the Board of Directors) of Common Stock or options therefor to directors, officers, employees or consultants of the Corporation in connection with their service as directors of the Corporation, their employment by the Corporation or their retention as consultants by the Corporation, in each case authorized by the Board of Directors and issued pursuant to any equity incentive plan approved by the Board of Directors ("Excluded Shares"), plus such number of Excluded Shares that are repurchased by the Corporation from such persons after such Closing Date in accordance with this Certificate of Incorporation, pursuant to contractual rights held by the Corporation.

(c) Subdivision or Combination of Common Stock. In case the Corporation shall at any time after the Closing Date subdivide its outstanding shares of Common Stock into a greater number of shares (by any stock split, stock dividend or otherwise), the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased. In the case of any such subdivision, no further adjustment shall be made pursuant to Section A.7(a)(iv) by reason thereof.

(d) Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Series A Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Series A Preferred Stock, as the case may be, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including, without limitation, provisions for adjustments of the Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

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(e) Mergers, Asset Sales and Change of Control Transactions. Upon the election of a Majority Interest made in connection with any merger or consolidation of the Corporation with or into another corporation, or any sale of all or substantially all of the assets of the Corporation to another corporation, or any Change of Control Transaction, each share of Series A Preferred Stock shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount 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 Series A Preferred Stock would have been entitled upon such merger, consolidation, asset sale or Change of Control Transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in Section A.7 set forth with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in Section A.7 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as possible, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series A Preferred Stock. Upon the election of such Majority Interest hereunder, all holders of Series A Preferred Stock shall be deemed to have elected to so participate in such merger, consolidation, asset sale or Change of Control Transaction as provided in this Section A.7(e). Notwithstanding anything to the contrary contained herein, each holder of shares of Series A Preferred Stock shall have the right to elect to give effect to the conversion rights contained in Section A.6 instead of giving effect to the provisions contained in this Section A.7(e) with respect to the shares of Series A Preferred Stock held by such holder.

8. Covenants. So long as at least 10% of the Series A Preferred Stock originally issued (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the authorized number of shares of Series A Preferred Stock) shall remain outstanding, the Corporation shall not, without first having provided written notice of such proposed action to each holder of outstanding shares of Series A Preferred Stock and having obtained the affirmative vote or written consent of the holders of a Majority Interest:

(a) declare or pay any dividends other than dividends on the Series A Preferred Stock as provided in Section A.3 or make any distributions of cash, property or securities of the Corporation in respect of its capital stock, or apply any of its assets to the redemption, retirement, purchase or other acquisition of its capital stock, directly or indirectly, through subsidiaries or otherwise, except for (i) the redemption of Series A Preferred Stock pursuant to and as provided in this Certificate of Incorporation, or (ii) the repurchase of Excluded Shares.

(b) reclassify any capital stock;

(c) authorize or issue, or obligate itself to issue, any capital stock of the Corporation, or any securities convertible into or exercisable or exchangeable for capital stock of the Corporation, in any case senior to or on parity with the Series A Preferred Stock, or permit any subsidiary of the Corporation to issue any capital stock other than to the Corporation;

(d) amend, alter or repeal any provision of, or add any provision to, this Certificate of Incorporation, or take any other action if such action could adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series A Preferred Stock;

(e) effect any Liquidation Event, or event deemed a Liquidation Event pursuant to Section A.4(c) hereof; or

(f) enter into any agreement to do any of the foregoing that is not expressly made conditional on obtaining the affirmative vote or written consent of a Majority Interest.

Further, the Corporation shall not, by amendment of this Certificate of Incorporation or through any Liquidation Event or other reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, agreement 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 shall at all times in good faith assist in the carrying out of all the provisions of this Article Four and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series A Preferred Stock against impairment. Any successor to the Corporation shall agree in writing, as a condition to such succession, to carry out and observe the obligations of the Corporation hereunder with respect to the Series A Preferred Stock.

9. Notice; Adjustments.

(a) Liquidation Events, 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 of the transactions identified in clause (ii) hereof, or (ii) any Liquidation Event, event deemed a Liquidation Event pursuant to Section A.4(c) hereof, QPO or any other public offering becomes reasonably likely to occur, 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 thirty (30) days prior to such record date specified therein or the expected effective date of any such transaction, whichever is earlier, 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, event deemed a Liquidation Event pursuant to Section A.4(c) hereof, QPO or other public offering is expected to become effective, 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. Such notice shall be accompanied by a certificate prepared by the chief financial officer of the Corporation describing in detail (1) the facts of such transaction, (2) the amount(s) per share of Series A Preferred Stock or Common Stock each holder of Series A Preferred Stock would receive pursuant to the applicable provisions of this Certificate of Incorporation, and (3) the facts upon which such amounts were determined.

(b) Adjustments; Calculations. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to Section A.7, the Corporation at its expense

shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate setting forth in detail (i) such adjustment or readjustment, (ii) the Conversion Price before and after such adjustment or readjustment, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Series A Preferred Stock. All such calculations shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share as the case may be.

(c) Waiver of Notice. The holder or holders of a Majority Interest may, at any time upon written notice to the Corporation, waive any notice or certificate delivery provisions specified herein for the benefit of such holders, and any such waiver shall be binding upon all holders of such securities.

10. No Reissuance of Series A 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 which the Corporation shall be authorized to issue.

11. Contractual Rights of Holders. The various provisions set forth herein for the benefit of the holders of the Series A Preferred Stock shall be deemed contract rights enforceable by them, including, without limitation, one or more actions for specific performance.

B. COMMON STOCK

1. Voting. The holders of Common Stock voting together with the holders of outstanding Series A Preferred Stock as a single class shall be entitled to elect all of the Directors of the Corporation. Such Director(s) shall be the candidates receiving the greatest number of affirmative votes entitled to be cast (with each holder entitled to cast one vote for or against each candidate with respect to each share held by such holder), with votes cast against such candidates and votes withheld having no legal effect. The election of such Directors shall occur at the annual meeting of holders of capital stock or at any special meeting called and held in accordance with the bylaws of the Corporation, or by consent in lieu thereof in accordance with this Certificate of Incorporation and applicable law. If at any time fewer than the number of Directors indicated above have been elected, the Board of Directors shall nonetheless be deemed duly constituted.

2. Dividends. Subject to the payment in full of all preferential dividends to which the holders of the Series A Preferred Stock are entitled hereunder, the holders of Common Stock shall be entitled to receive dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion.

3. Liquidation. Upon any Liquidation Event, after the payment or provision for payment of all debts and liabilities of the Corporation and all preferential amounts to which the holders of Series A Preferred Stock are entitled with respect to the distribution of assets in liquidation, the holders of Common Stock shall be entitled to share ratably in the remaining assets of the Corporation available for distribution, as contemplated by Section A.4.

4. Fractional Shares; Uncertificated Shares. No fractional shares of Common Stock shall be issued. If at any time the registered holder would be entitled to receive a fractional share, then an amount equal to such fractional share multiplied by the then fair market value of one share of Common Stock, determined in good faith by the Board of Directors, shall be paid in cash to such registered holder.

5. Residual Rights. All rights accruing to the outstanding shares of the corporation not expressly provided for to the contrary herein shall be vested in the Common Stock."

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