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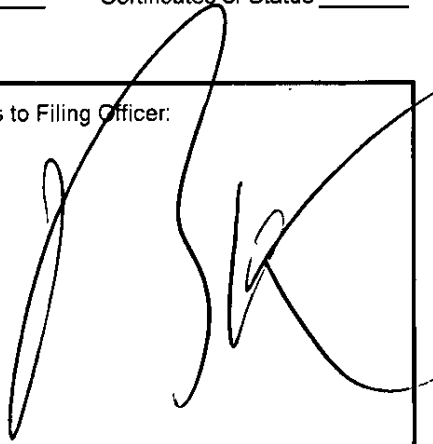
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PICK-UP  WAIT  MAIL

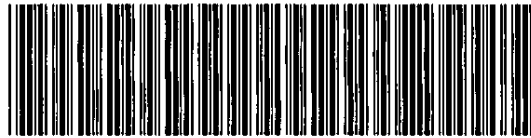
(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

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FILED  
07 SEP 18 PM 4:38  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA



CORPORATION SERVICE COMPANY

FILED  
07 SEP 18 PM 4:38  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ACCOUNT NO. : 072100000032  
REFERENCE : 232935 4312909  
AUTHORIZATION :  
COST LIMIT : \$ 55 *Dubelman*

ORDER DATE : September 18, 2007  
ORDER TIME : 2:05 PM  
ORDER NO. : 232935-005  
CUSTOMER NO: 4312909

DOMESTIC AMENDMENT FILING

NAME: SMALLPONDS LLC

EFFECTIVE DATE:

XX  CONVERSION  
 RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX  CERTIFIED COPY  
 PLAIN STAMPED COPY  
 CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Harry B. Davis -- EXT# 2926

EXAMINER'S INITIALS: \_\_\_\_\_

**FILED**  
07 SEP 18 PM 4:38  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**Certificate of Conversion**  
For  
**Florida Limited Liability Company**  
Into  
**"Other Business Entity"**

This Certificate of Conversion is submitted to convert the following **Florida Limited Liability Company into an "Other Business Entity"** in accordance with s. 608.4403, Florida Statutes. .

1. The name of the Florida Limited Liability Company converting into the "Other Business Entity" is:

**smallponds LLC,**  
**a Florida limited liability company**  
**Doc. # L07000049219**

2. The name of the "Other Business Entity" is:

**smallponds, Inc.,**  
**a Delaware corporation**

3. The "Other Business Entity" is a **corporation** organized, formed or incorporated under the laws of Delaware.
4. The above referenced Florida Limited Liability Company has converted into an "Other Business Entity" in compliance with Chapter 608, F.S., and the conversion complies with the statute or applicable law governing the "Other Business Entity."
5. The plan of conversion was approved by the converting Florida Limited Liability Company in accordance with Chapter 608, F.S.
6. If applicable, the written consent of each member who, as a result of the conversion, is now a general partner of the surviving entity was obtained pursuant to s. 608.4402(2), F.S. N/A
7. This conversion was effective under the laws governing the "Other Business Entity" on: September 17, 2007.

8. This conversion shall be effective in Florida on: September 18, 2007, immediately upon filing with the Florida Dept. of State.
9. The principal office address of the "Other Business Entity" under the laws of the state, country, or jurisdiction in which such entity was organized is as follows:

2711 Centerville Road  
Wilmington, Delaware 19808

10. If the "Other Business Entity" is an out-of-state entity not registered to transact business in Florida, the "Other Business Entity" lists the following street and mailing address of an office the Florida Department of State may use for purposes of s. 48.181, F.S.

G. Cotter Cunningham  
760 US Highway One, Suite 102  
North Palm Beach, Florida 33408

11. The "Other Business Entity" has agreed to pay any members having appraisal rights the amount to which such members are entitled under ss. 608.4351-608.43595, F.S.

Signed this 18 day of September, 2007.

Signature: \_\_\_\_\_

G. Cotter Cunningham, Sole Member

**PLAN OF CONVERSION  
OF  
SMALLPONDS LLC  
(A Florida Limited Liability Company)  
INTO  
SMALLPONDS, INC.  
(A Delaware Corporation)**

**THIS PLAN OF CONVERSION** (the "*Plan*"), dated to be effective as of the Effective Date as defined in Section 1.7 below, is made pursuant to Section 608.4401 of the Florida Statutes (the "*Statutes*"), by smallponds LLC, a Florida limited liability company (the "*Converting Entity*").

**WHEREAS**, the Converting Entity is a limited liability company duly organized and validly existing under the laws of the State of Florida; and

**WHEREAS**, the sole member of the Converting Entity deems it advisable and in the best interests of the Converting Entity that the Converting Entity convert into smallponds, Inc., a Delaware corporation (the "*Converted Entity*"), as provided herein and has approved and adopted the form, terms and provisions of this Plan.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements hereinafter set forth, in accordance with the provisions of applicable law, the parties hereby agree as follows:

**ARTICLE I  
GENERAL**

**Section 1.1 The Conversion.** The members of the Converting Entity agree to effect the conversion, subject to the terms and conditions herein set forth.

**Section 1.2 Converted Entity.** Upon the Effective Date, the conversion shall be accomplished by converting the Converting Entity into the Converted Entity, and the existence of the Converting Entity shall continue in the form of the Converted Entity in accordance with the Delaware General Corporation Law.

**Section 1.3 Organizational Form of Converted Entity.** The Converted Entity shall be a corporation formed under the laws of the State of Delaware.

**Section 1.4 Certificate of Incorporation of Converted Entity.** Upon the Effective Date, the Certificate of Incorporation attached as Exhibit A shall be the Certificate of Incorporation of the Converted Entity until altered, amended or repealed.

**Section 1.5 Directors and Officers of the Converted Entity.**

(a) **Board of Directors.** The powers of the Converted Entity shall be exercised by or under the authority of, and the business and affairs of the Converted Entity shall be managed under the direction of the Board of Directors. The number of initial directors of the Converted Entity shall be one, and he shall serve as such until his resignation or removal, either according to law or the Bylaws of the Converted Entity. The name and address of the initial director of the Converted Entity is:

Name	Address
G. Cotter Cunningham	760 U.S. Highway One, Suite 102 North Palm Beach, Florida 33408

(b) **Officers.** The following person shall serve as the officer of the Converted Entity until his resignation or removal, either according to law or the Bylaws of the Converted Entity:

Name	Office
G. Cotter Cunningham	Chief Executive Officer, President, Treasurer and Secretary

**Section 1.6 Properties and Liabilities.**

(a) Upon the Effective Date, the Converting Entity shall be converted into the Converted Entity and the existence of the Converting Entity shall continue, without interruption, in the form of the Converted Entity. The Converted Entity shall, from and after the Effective Date, possess all the rights, privileges, immunities, powers and franchises of whatsoever nature and description, of a public as well as of a private nature, and be subject to all the restrictions, disabilities and duties of the Converting Entity.

(b) All rights, title and interest in property, real, personal and mixed, and all debts on whatever account, as well as all other things in action belonging to or due to the Converting Entity shall continue to be owned by or due to the Converted Entity; and all property, rights, privileges, immunities, powers and franchises, and all and every other interest shall be thereafter as effectively the property of the Converted Entity as they were of the Converting Entity, and the title to any real estate vested by deed or otherwise and any leasehold interests in the Converted Entity shall not revert or be in any way impaired by reason of the conversion.

(c) All liabilities or obligations of the Converting Entity shall continue to be liabilities and obligations of the Converted Entity without impairment or diminution by reason of the conversion. All rights of creditors or other parties with respect to or against the members of the Converting Entity, in their capacity as members, in existence as of the Effective Date, will continue to exist as to those liabilities and obligations, and be pursued by those creditors and obligees, as if the conversion had not occurred. All liens upon the property of the Converting Entity shall be preserved unimpaired, and all debts, liabilities, obligations and duties of the Converting Entity shall continue to exist and shall thenceforth attach to the Converted Entity, and may be enforced against the Converted Entity to the same extent as if the debts, liabilities, obligations and duties had been incurred or contracted by it.

(d) Any claim, action or proceeding, whether civil, criminal or administrative, pending by or against the Converting Entity or the Converting Entity's members, in their capacity as members, may be continued by or against the Converted Entity or the members, as the case may be, without any substitution of parties.

(e) Upon the conversion, the Converted Entity shall deliver to the Florida Department of State an application for a Certificate of Authority to Transact Business in Florida under the name "smallponds, Inc." and the Converting Entity hereby preserves its name for the use of the Converted Entity upon the conversion.

**Section 1.7 Effective Date.** The conversion shall be effective upon the latest to be filed of Certificate of Conversion with the Secretary of State of the State of Florida and a Certificate of Conversion with the Secretary of State of the State of Delaware (the "*Effective Date*").

**Section 1.8 Amendment.** This Plan may be amended at any time prior to the Effective Date upon the express written consent of the sole member of the Converting Entity.

**Section 1.9 Authorization.** The signature of the sole member of the Converting Entity on any documents and instruments executed in connection therewith or pursuant thereto shall be conclusive evidence of his authority to execute and deliver such instruments or documents.

**ARTICLE II  
CAPITAL STOCK OF CONVERTED ENTITY**

**Section 2.1 Conversion of Membership Interest.** On the Effective Date, each outstanding 1.0% of membership interest in the Converting Entity shall be converted into 1289.75 shares of Common Stock of the Converted Entity without further Statutes or deed of the members of the Converting Entity, all as more particularly set forth in Section 2.2 below.

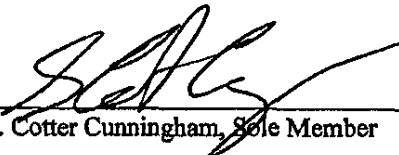
**Section 2.2 Security Holders of Converted Entity.** On the Effective Date, the following person shall be the sole stockholder of the Converted Entity holding the number and type of shares of the outstanding capital stock of the Converted Entity set forth opposite his name:

<b>Name</b>	<b>% of Membership Interest in the Converting Entity</b>	<b>Shares of Common Stock in Converted Entity (Delaware Corp.)</b>
G. Cotter Cunningham	100%	1,289,750

*Signature Page Follows*

EXECUTED this 18 day of September, 2007, to be effective as of the Effective Date.

**SMALLPONDS LLC**  
a Florida limited liability company

By:   
G. Cotter Cunningham, Sole Member



**EXHIBIT A**

**CERTIFICATE OF INCORPORATION  
OF CONVERTED ENTITY**

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A FLORIDA LIMITED LIABILITY COMPANY UNDER THE NAME OF "SMALLPONDS LLC" TO A DELAWARE CORPORATION, CHANGING ITS NAME FROM "SMALLPONDS LLC" TO "SMALLPONDS, INC.", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF SEPTEMBER, A.D. 2007, AT 3:59 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4424140 8100V

071022963



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6005585

DATE: 09-17-07

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 04:19 PM 09/17/2007  
FILED 03:59 PM 09/17/2007  
SRV 071022963 - 4424140 FILE

STATE OF DELAWARE  
CERTIFICATE OF CONVERSION  
FROM A LIMITED LIABILITY COMPANY TO A  
CORPORATION PURSUANT TO SECTION 265 OF  
THE DELAWARE GENERAL CORPORATION LAW

smallponds LLC, a Florida limited liability company (the "*Limited Liability Company*"), does hereby certify as follows:

1. The jurisdiction where the Limited Liability Company first formed is Florida.
2. The jurisdiction immediately prior to filing this Certificate is Florida.
3. The date the Limited Liability Company first formed is May 9, 2007.
4. The name of the Limited Liability Company immediately prior to filing this Certificate is smallponds LLC.
5. The name of the corporation into which the Limited Liability Company is hereby being converted is smallponds, Inc., as set forth in the certificate of incorporation filed with the Delaware Secretary of State in accordance with Section 265(b) of the Delaware General Corporate Law.

IN WITNESS WHEREOF, the undersigned, being duly authorized to sign on behalf of the converting Limited Liability Company, has executed this Certificate of Conversion on the 1<sup>st</sup> day of September, 2007.

smallponds LLC

By: 

G. Cotter Cunningham, Sole Member

# Delaware

PAGE 2

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF CERTIFICATE OF INCORPORATION OF "SMALLPONDS, INC." FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF SEPTEMBER, A.D. 2007, AT 3:59 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4424140 8100V

071022963



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6005585

DATE: 09-17-07

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CERTIFICATE OF INCORPORATION  
OF  
SMALLPONDS, INC.

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ARTICLE I

The name of the corporation is smallponds, Inc. (the "*Corporation*").

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is Corporation Service Company, 2711 Centerville Road, City of Wilmington, County of New Castle, Delaware. The name of the registered agent at that address is Corporation Service Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (the "*General Corporation Law*").

ARTICLE IV

A. Classes of Stock. The Corporation is authorized to issue two classes of capital stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares of capital stock authorized to be issued is 7,800,000 shares. 5,200,000 shares shall be Common Stock, par value \$0.001 per share, and 2,600,000 shares shall be Preferred Stock, par value \$0.001 per share, all such Preferred Stock shall be designated as "Series A Convertible Preferred Stock" (the "*Series A Preferred Stock*").

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

1. Dividend Provisions.

(a) Series A Preferred Stock. The holders of the outstanding shares of Series A Preferred Stock shall be entitled to receive dividends from time to time out of any assets legally available for payment of dividends, when, as, and if declared by the Board prior and in preference to any declaration or payment of any dividend on the Common Stock or any other class of capital stock ranking junior to the Series A Preferred Stock with respect to dividends. Any declared but unpaid dividends on shares of the Series A Preferred Stock shall be payable in cash upon the liquidation, dissolution, or winding up of the Corporation as provided in Section 2, or upon the redemption of the Series A Preferred Stock as provided in Section 3.

(b) Priority on Dividends; Participation. Unless the full amount of all declared but unpaid dividends on the Series A Preferred Stock shall have been paid in full or a sum sufficient for the payment of such dividends reserved and irrevocably set apart, (i) no dividend or distribution shall be declared or paid on any class of capital stock ranking junior to the Series A Preferred Stock with respect to dividends or distributions and (ii) no shares of capital stock ranking junior to the Series A Preferred Stock with respect to dividends or distributions shall be purchased, redeemed, or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption, or acquisition of any such shares; provided that this restriction shall not apply to (x) the redemption of Series A Preferred Stock pursuant to the terms of this Certificate of Incorporation or (y) the repurchase of shares of Common Stock from directors or employees of, or consultants or advisors to, the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at the original purchase price or less of such shares upon the occurrence of certain events, including without limitation, the termination of employment by or service to the Corporation or any subsidiary. If, after dividends on the full preferential amounts specified in Subsection 2(a) have been paid or irrevocably set apart, the Board shall declare additional dividends out of funds legally available for payment of dividends in that calendar year, then the aggregate amount of such additional dividends shall be distributed to the holders of Common Stock and Series A Preferred Stock pro rata according to the number of shares of Common Stock held by such holders, where each holder of shares of Series A Preferred Stock is treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Series A Preferred Stock held by such holder pursuant to Section 4.

(c) Non-Cash Dividend. Any dividend or distribution which is declared by the Corporation and payable with assets of the Corporation other than cash shall be governed by the provisions of Subsection 2(c)(ii).

## 2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, each holder of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share (the "Liquidation Amount") equal to the sum of (i) \$1.00 (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations or the like after the date shares of Series A Preferred Stock are first issued ("Initial Series A Issue Date")) for each outstanding share of Series A Preferred Stock held by such holder and (ii) an amount equal to all declared but unpaid dividends on the shares of Series A Preferred Stock held by such holder. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the amount of such stock owned by each such holder.

(b) After the distribution described in Subsection 2(a) above has been paid, the remaining assets of the Corporation available for distribution to stockholders shall be

distributed among the holders of Common Stock and Series A Preferred Stock in proportion to the number of shares of Common Stock then held by such holder, where each holder of shares of Series A Preferred Stock is treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Series A Preferred Stock held by such holder pursuant to Section 4.

(c) (i) For purposes of this Section 2, unless otherwise determined by the holders of at least two-thirds (2/3) of the then outstanding shares of the Series A Preferred Stock, a liquidation, dissolution, or winding up of the Corporation, shall be deemed to be occasioned by, or to include, (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger, or consolidation); (B) a sale or the exclusive licensing of all or substantially all of the intellectual property of the Corporation in any transaction or series of transactions; or (C) a sale of all or substantially all of the assets of the Corporation; unless the Corporation's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities to be delivered to the holders of the Series A Preferred Stock or Common Stock, as the case may be, shall be valued as follows:

(A) For securities not subject to restrictions on free marketability:

(1) If traded on a securities exchange or through Nasdaq, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30 day period ending three days prior to the closing;

(2) If traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30 day period ending three days prior to the closing; and

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

(B) The method of valuation of securities subject to restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board of Directors of the Corporation) from the market value as determined pursuant to clause (A) above so as to reflect the approximate fair market value.

(C) In the event the requirements of this Subsection 2(c) are not complied with, the Corporation shall forthwith either:

(1) cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(2) cancel such transaction, in which event the respective rights, preferences, and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Subsection 2(c)(iv) below.

(iii) The Corporation shall provide to each holder of record of Series A Preferred Stock written notice at the address last shown on the records of the Corporation for such holder of such impending transaction not later than 5 days prior to the stockholders' meeting called to approve such transaction, or 5 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 20 days after the Corporation has given the first notice provided for herein or sooner than 10 days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened or waived upon the Corporation's receipt of written consent of the holders of at least a majority of the Series A Preferred Stock entitled to such notice rights or similar notice rights.

### 3. Redemption.

(a) At any time after the seventh anniversary of the Initial Series A Issue Date, but within 30 days after the receipt by the Corporation of a written request from the holders of at least two-thirds of the then outstanding shares of Series A Preferred Stock that the shares of Series A Preferred Stock be redeemed (the "Redemption Request"), and concurrently with surrender by such holders of the certificates representing such shares, the Corporation, to the extent it may lawfully do so, shall redeem the shares of Series A Preferred Stock by paying a sum per share equal to the Liquidation Amount for such share on the Redemption Date (the "Redemption Price"). Such redemption shall occur in three equal annual installments (each a "Redemption Date"), with the first such Redemption Date occurring on a date set by the Corporation, which shall be no more than 30 days after the receipt by the Corporation of a Redemption Request, the second such Redemption Date occurring on the first anniversary of the first Redemption Date, and the third such Redemption Date occurring on the second anniversary of the first Redemption Date; provided that any Redemption Date may be set as an earlier date upon the mutual consent of the Corporation and the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, but in no event may each of the Redemption Dates occur on a date earlier than as set forth above. Any redemption effected pursuant to this Subsection 3(a) shall be made on a pro rata basis among the holders of the Series A Preferred Stock in proportion to aggregate Redemption Price for the shares of Series A Preferred Stock held by them. If any date fixed for redemption of shares pursuant to this Subsection 3(a) is a Saturday, Sunday, or legal holiday, then such redemption shall occur on the first business day thereafter.



(b) At least 15 but no more than 30 days prior to the applicable Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed (the "Redemption Notice"). Except as provided in Subsection 3(c), on or after the applicable Redemption Date, each holder of Series A Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after the applicable Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series A Preferred Stock designated for redemption in the Redemption Notice as holders of such shares of Series A Preferred Stock (except the right to receive the applicable Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed.

The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on the applicable Redemption Date but which it has not redeemed.

(d) On or prior to the Redemption Date, the Corporation shall deposit the Redemption Price of all shares of Series A Preferred Stock designated for redemption in the Redemption Notice, and not yet redeemed or converted, with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to publish the notice of redemption thereof and pay the applicable Redemption Price for such shares to their respective holders on or after the applicable Redemption Date, upon receipt of notification from the Corporation that such holder has surrendered his, her or its share certificate(s) to the Corporation pursuant to Subsection 3(b) above. As of the date of such deposit (even if prior to the applicable

Redemption Date), the deposit shall constitute full payment of the shares to their holders. From and after the date of such deposit the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto, except the rights to receive from the bank or trust corporation payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor and the right to convert such shares as provided in Section 4 below. Such instructions shall also provide that any monies deposited by the Corporation pursuant to this Subsection 3(d) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4 below prior to the applicable Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any monies deposited by the Corporation pursuant to this Subsection 3(d) remaining unclaimed at the expiration of two years following the final Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

4. Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined, with respect to each share of Series A Preferred Stock, by dividing \$1.00 (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations or the like after the Initial Series A Issue Date) (the "Original Series A Issue Price") by the "Conversion Price" in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for the Series A Preferred Stock shall be the Original Series A Issue Price; provided, however, that such Conversion Price shall be subject to adjustment as set forth in Subsection 4(d) below.

(b) Automatic Conversion. Each share of Series A Preferred Stock automatically shall be converted into shares of Common Stock at the Conversion Price at the time in effect immediately upon the earlier of (i) the Corporation's sale of Common Stock in a firm commitment underwritten public offering by a nationally recognized underwriter pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), with gross proceeds to the Corporation and selling stockholders (before deducting underwriting commissions and expenses) therein of at least \$20,000,000 in the aggregate and in which the price per share paid by the public for such shares is at least two times the Original Series A Issue Price (a "Qualified Public Offering") or (ii) the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Subsection 4(a) above and upon the occurrence of the events specified in Subsection 4(b) above, as the case may be, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock, and in the case of Subsection 3(a) above shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in

which the certificate or certificates for shares of Common Stock are to be issued; provided that any failure by a holder to comply with these provisions shall not have any effect on the automatic conversion of such holder's shares, which shall in any event convert in accordance with Subsection 4(b) above. The Corporation shall, as soon as practicable thereafter, pay all accrued or declared and unpaid dividends on such shares of stock and issue and deliver at such office to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion shall be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments. The Conversion Price shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, after the Initial Series A Issue Date, any Additional Stock (as defined in Subsection 4(d)(ii) below) without consideration or for a consideration price per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying the Conversion Price by a fraction, the numerator of which shall be (a) the number of shares of Common Stock outstanding (or deemed outstanding pursuant to Subsection 4(d)(i)(E)) plus the number of shares of Common Stock issuable upon conversion of any shares of Series A Preferred Stock outstanding immediately prior to such issuance ("*Common Stock Deemed Outstanding*") plus (b) the number of shares of Common Stock (assuming conversion or exercise in the case of a convertible security) that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock Deemed Outstanding immediately prior to such issuance plus the number of shares of Additional Stock so issued in such issuance. For example, if after the Initial Series A Issue Date, the Corporation issues 6,000,000 shares of Common Stock for consideration per share of \$0.50, and assuming there are 5,000,000 shares of Common Stock Deemed Outstanding immediately prior to such issuance, the Conversion Price immediately would be reduced to the price determined by multiplying \$1.00, the Conversion Price then in effect, by the following fraction:

$$\begin{array}{r}
 5,000,000 \quad + \quad \frac{\$0.50 \times 6,000,000}{\$1.00} \\
 \hline
 5,000,000 \quad + \quad 6,000,000 \\
 \\
 = \quad \frac{8,000,000}{11,000,000} \\
 \\
 = \quad 0.727
 \end{array}$$

resulting in an adjusted Conversion Price of \$0.727 (i.e., \$1.00 x 0.727), and an adjusted conversion rate of 1.375:1 (i.e., \$1.00/\$0.727).

(B) No adjustment of the Conversion Price shall be made if such adjustment would be in an amount less than one cent per share.

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

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined pursuant to Subsection 2(c)(ii) above.

(E) In the case of the issuance (on or after the applicable Initial Series A Issue Date) of equity securities, the following provisions shall apply for all purposes of this Subsection 4(d)(i) and Subsection 4(d)(ii):

(3) The aggregate maximum number of shares of Common Stock deliverable upon exercise (to the extent then exercisable) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Subsections 4(d)(i)(C) and Subsection 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(4) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (to the extent then convertible or exchangeable) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration

in each case to be determined in the manner provided in Subsections 4(d)(i)(C) and Subsection 4(d)(i)(D).

(5) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of Subsection 4(d)(i)(A)), the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(6) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

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

(ii) "Additional Stock" shall mean all shares of Common Stock issued (or deemed to have been issued pursuant to Subsection 4(d)(i)(E)(1) or Subsection 4(d)(i)(E)(2)) by the Corporation after the Initial Series A Issue Date, other than shares of Common Stock issued or issuable:

(A) to officers, directors or employees of, or consultants or other service providers to, the Corporation as compensation for services, directly or pursuant to a stock option plan or an agreement approved by the Board of Directors (including the approval of the Series A Director (as defined in Subsection 5(b) below));

(B) upon conversion of shares of the Series A Preferred Stock;

(C) upon the exercise of warrants or other securities or rights exercisable to purchase the Corporation's capital stock approved by the Board of Directors (including the approval of the Series A Director);

(D) as dividends approved by the holders of at least a majority of the Series A Preferred;

(E) to banks, savings and loan associations, equipment lessors or other similar lending institutions in connection with such entities providing working capital credit facilities or equipment financing to the Corporation for a non-equity financing purpose approved by the Board of Directors (including the approval of the Series A Director);

(F) pursuant to or in connection with collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors (including the approval of the Series A Director);

(G) pursuant to bona fide business or technology acquisitions (or licenses) of or by the Corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock reorganization or otherwise which is approved by the Board of Directors (including the approval of the Series A Director);

(H) pursuant to the sale of shares of the Corporation's capital stock in connection with a Qualified IPO and any agreement allocating shares of capital stock in connection with such Qualified IPO; or

(I) pursuant to the issuance of shares of the Corporation's capital stock or upon the exercise of options, warrants or other agreements to purchase the Corporation's capital stock that are issued for charitable purposes and that are approved by the Board of Directors (including the approval of the Series A Director).

(iii) No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Stock.

(iv) In the event the Corporation should at any time or from time to time after the Initial Series A Issue Date fix a record date for the effectuation of a split or a subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "*Common Stock Equivalents*") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of the Series A Preferred shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

If the number of shares of Common Stock deemed outstanding at any time after the Initial Series A Issue Date is decreased by a combination of the outstanding

shares of Common Stock, then, following the record date of such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the outstanding shares.

(e) Other Distributions. In the event the Corporation shall declare a dividend or distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or Common Stock Equivalents, then, in each such case, the holders of the Series A Preferred Stock shall be entitled to a *proportionate* share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such dividend or distribution.

(f) Recapitalizations. If at any time or from time to time after the Initial Series A Issue Date, there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2 above) provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of their shares of Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

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

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock which the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series A Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such 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. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) 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 a share of Series A Preferred Stock.

(h) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) 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 then outstanding shares of Series A Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series A Preferred Stock, the Corporation will take such corporate action as, in the opinion of its counsel, may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation.

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

#### 5. Voting Rights.

(a) General Voting Rights. The holder of each share of Series A Preferred Stock (i) shall have the right to one vote for each share of Common Stock into which such holder's shares of Series A Preferred Stock could then be converted, with full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, except as required by law or as expressly provided herein, including the protective provisions in Section 6 below; (ii) shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation; and (iii) except for such elections as described in Section 5(b)(ii) and (iii), shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with 0.5 being rounded upward).



(b)  Voting for the Election of Directors. The Board of Directors shall be elected as follows:

(i) So long as any shares of Series A Preferred Stock (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations or the like after the Initial Series A Issue Date) remain outstanding, the holders of the outstanding shares of Series A Preferred Stock shall have the exclusive right, separately from the holders of Common Stock, to elect one director of the Corporation (the "*Series A Director*"). The Series A Director shall be elected by the vote or written consent of the holders of a majority in voting power of the outstanding shares of Series A Preferred Stock. If the Series A Director shall cease to serve as a director for any reason, another director elected by the holders of the Series A Preferred Stock shall replace such director. The Series A Director may be removed, with or without cause, and the replacement Series A Director may be elected in his stead, at any time by the affirmative vote at a meeting duly called for the purpose, or by written consent, of the holders of a majority in voting power of the outstanding shares of Series A Preferred Stock.

(ii) The holders of the outstanding shares of Common Stock shall have the exclusive right, separately from the holders of Series A Preferred Stock, to elect one director of the Corporation (the "*Common Director*"). The Common Director shall be elected by the vote or written consent of the holders of a majority in voting power of the outstanding Common Stock. If the Common Director shall cease to serve as a director for any reason, another director elected by the holders of the Common Stock shall replace such director. The Common Director may be removed, with or without cause, and a replacement Common Director may be elected in his stead, at any time by the affirmative vote at a meeting duly called for the purpose, or by written consent, of the holders of a majority in voting power of the outstanding shares of Common Stock.

(iii) The holders of the outstanding shares of Common Stock and Series A Preferred Stock, voting or acting as separate classes, shall have the right to elect any additional directors of the Corporation (the "*Additional Directors*"). Any Additional Directors shall be elected by the vote or written consent of the holders of a majority in voting power of each of the outstanding (a) Common Stock and (b) Series A Preferred Stock. If any Additional Director shall cease to serve as a director for any reason, another director elected by each of the holders of (a) Common Stock and (b) Series A Preferred Stock shall replace such director. An Additional Director may be removed, with or without cause, and a replacement Additional Director may be elected in his stead, at any time by the affirmative vote at a meeting duly called for the purpose, or by written consent, of the holders of a majority in voting power of (a) the Common Stock and (b) the Series A Preferred Stock.

6. Protective Provisions. So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as permitted by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting or acting, as the case may be, as a single class:

(a) materially and adversely change the rights, preferences, privileges or powers of, or restrictions provided for the benefit of, the Series A Preferred Stock;

(b) authorize or issue, or authorize or effect any reclassification of, or obligate itself to issue, any equity security, including any other security convertible into or exercisable for any equity security, so as to cause such security to be on parity with, or to have a preference over, the Series A Preferred Stock;

(c) reclassify any outstanding shares into shares having preferences superior to or on parity with the Series A Preferred Stock;

(d) amend the Corporation's Certificate of Incorporation;

(e) authorize, issue, or obligate itself to issue any additional shares of Series A Preferred Stock, or increase the total number of authorized shares of Series A Preferred Stock;

(f) increase the size of the Board of Directors beyond three (3) directors;

(g) take any action or permit any action to be taken which would effect a consolidation, merger, corporate reorganization, or any other transaction or series of related transactions in which all or substantially all of the assets of the Corporation are sold, transferred, leased or otherwise conveyed, or a material portion of the Corporation's intellectual property is exclusively licensed, or in which transaction the Corporation's stockholders immediately prior to such transaction own immediately after such transaction less than 50% of the voting securities of the surviving corporation or its parent;

(h) (i) liquidate, dissolve or wind-up the business and affairs of the Corporation; (ii) effect or permit any subsidiary of the Corporation (a "Subsidiary") to effect any liquidation event, including the sale, lease, transfer, or other disposition of all or substantially all of the assets of the Corporation or, (iii) unless the obligations of the Corporation or any Subsidiary under each applicable agreement are expressly conditional upon the requisite approval of the holders of the Series A Preferred Stock, make any agreement or become obligated to do so or permit a Subsidiary to make any agreement or become obligated to do so;

(i) declare or pay any dividend on Common Stock or any other class or series of stock (other than a dividend payable solely in shares of Common Stock);

(j) incur indebtedness in excess of \$100,000 in the aggregate; or

(k) increase the number of shares of Common Stock (other than due to stock split, subdivision or other dividend) reserved for issuance under the Corporation's 2007 Stock Plan or create any new equity incentive or benefit plan, other than as approved by a majority of the Board of Directors, including the Series A Directors.

7. Status of Converted or Redeemed Stock. In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 4 above, or in the event any shares of Series A Preferred Stock shall be redeemed pursuant to Section 3 above, the shares so converted or redeemed shall be cancelled and shall not thereafter be issuable by the Corporation.

### C. Common Stock.

1. Dividend Rights. Subject to the provisions of Division B of this Article IV, the holders of the Common Stock shall be entitled to receive, when, as, and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Section B of this Article IV.

3. Redemption. The Common Stock is not redeemable at the election of the holders of Common Stock.

4. Voting Rights. In addition to the voting rights provided for in Subsection 5(b)(ii) of Division B of this Article IV, the holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. Subject to Subsection 2.4(b) of Division B of this Article IV, 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 or reserved for issuance upon the exercise of options or warrants or the conversion of Series A Preferred Stock) by the affirmative vote of the holders of at least a majority of the capital stock of the Corporation entitled to vote, voting as a single class, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

## ARTICLE V

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended after approval by the stockholders of this Article V to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article V by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

## ARTICLE VI

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which Delaware law permits the Corporation to provide indemnification)

through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others.

#### ARTICLE VII

The Board of Directors may from time to time adopt, amend, alter, supplement, rescind or repeal any or all of the bylaws of the Corporation without any action on the part of the stockholders; provided, however, that the stockholders may adopt, amend or repeal any bylaw adopted by the Board of Directors, and no amendment or supplement to the bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement adopted by the stockholders.

#### ARTICLE VIII

Subject to any restrictions which may be imposed by the Corporation's bylaws, the number of directors of the Corporation shall be set from time to time by resolution of the Board of Directors.

#### ARTICLE IX

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

#### ARTICLE X

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation.

#### ARTICLE XI

The name and address of the person who will serve as the initial director of the Corporation until the next annual meeting of the stockholders or until his successor(s) are duly elected and qualified is as follows:

<u>Name</u>	<u>Address</u>
G. Cotter Cunningham	smallponds, Inc. 760 U.S. Highway One Suite 102 North Palm Beach, FL 33408

**ARTICLE XII**

The name and address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
G. Cotter Cunningham	smallponds, Inc. 760 U.S. Highway One Suite 102 North Palm Beach, FL 33408

\* \* \*

THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of Delaware, does make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 12<sup>th</sup> day of September, 2007.

By:   
G. Cotter Cunningham, Incorporator