

JUN. 14, 2005

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FOLEY LARDNER

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# P01000023268

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BASIC AMENDMENT  
IMAGINAIL CORPORATION

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Amendment

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**ARTICLES OF AMENDMENT TO  
SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION OF  
IMAGINAIL CORPORATION**

**DESIGNATING THE PREFERENCES, RIGHTS AND  
LIMITATIONS OF 7,180,337 SHARES OF  
SERIES C CUMULATIVE CONVERTIBLE PREFERRED STOCK**

**\$0.01 Par Value**

Pursuant to Section 607.0602 of the Florida Business Corporation Act ("FBCA"), Imaginail Corporation, a Florida corporation (the "Corporation"), does hereby certify that:

**FIRST:** Pursuant to the authority expressly vested in the Board of Directors of the Corporation by Article V(3) of the Amended and Restated Articles of Incorporation of the Corporation (the "Charter") and Section 607.0602 of the FBCA, the Board of Directors of the Corporation, by resolutions duly adopted on June 13, 2005, has classified 7,180,337 shares of the authorized but unissued Preferred Stock par value \$0.01 per share, as a separate series of Preferred Stock, authorized the issuance of a maximum of 7,180,337 shares of such series of Preferred Stock, and set certain of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, terms and conditions of redemption and other terms and conditions of such series of Preferred Stock. Pursuant to Section 607.0704 and Section 607.1004 of the FBCA, the Amendment was approved by written consent of the holders of the outstanding shares of Series A Preferred Stock effective June 13, 2005 and by written consent of the holders of the outstanding shares of Series B Preferred Stock, effective June 13, 2005. The number of votes cast by each such voting group was sufficient for approval of the Amendment by each such voting group. No other voting group was entitled to vote on the Amendment.

**SECOND:** The series of Preferred Stock of the Corporation created by the resolutions duly adopted by the Board of Directors of the Corporation shall have the following designation, number of shares, preferences, conversion and other rights, voting powers, restrictions and limitation as to dividends, qualifications, terms and conditions of redemption and other terms and conditions:

**SECTION 1. Designation and Amount.**

1.1 The shares of this series of Preferred Stock shall be designated as "Series C Cumulative Convertible Preferred Stock" (the "Series C Preferred Stock") and the number of shares constituting such series shall be 7,180,337, par value \$0.01 per share. As to dividends, the Series C Preferred Stock shall rank on a parity with the Series B Preferred Stock and on a parity with the Series A Preferred Stock. As to liquidation, the Series C Preferred Stock shall rank on a parity with the Series B Preferred Stock and senior to the Series A Preferred Stock.

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## SECTION 2. *Dividends*

2.1 The holders of Series C Preferred Stock shall be entitled to receive a dividend at the rate of 6% of the Original Purchase Price per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum (such amount, the "Preferred Dividend"), payable out of funds legally available therefor. The "Original Purchase Price" per share is \$0.3821. Such dividends shall be payable only when, as, and if declared by the Board of Directors but shall be cumulative from the date of issuance of the shares of Series C Preferred Stock as to which such dividends are payable. Accrued but unpaid dividends shall not bear interest.

2.2 No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid on, nor shall the Corporation make any purchase or redemption of, or any sinking fund payment for the purchase or redemption of, any Common Stock or any other capital stock junior to the Series A, B or C Preferred Stock as to the payment of dividends of the Corporation during any fiscal year of the Corporation until dividends in the total amount of the Preferred Dividend per share on the Series A, B and C Preferred Stock shall have been paid or declared and set apart during that fiscal year and in which dividends on the Series A, B and C Preferred Stock accumulated but remain unpaid.

2.3 All dividends declared on shares of Series B Preferred Stock, Series A Preferred Stock, Series C Preferred Stock and any other capital stock on a parity with the Series C Preferred Stock as to the payment of dividends shall be declared pro rata, so that the amounts of dividends declared per share on the Series C Preferred Stock and such other stock for the dividend period of the Series C Preferred Stock ending either on the same day or within the same dividend period of such other stock shall, in all cases, bear to each other the same ratio that accrued dividends per share on the shares of Series C Preferred Stock and such other stock bear to each other.

2.4 In the event the Corporation shall declare a dividend or other distribution (other than any distribution described in Sections 3 or 4) on shares of Common Stock payable in cash, equity securities of the Corporation (other than equity securities as to which an adjustment is made to the Series C Conversion Price pursuant to Section 6), securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case the holders of the Series C Preferred Stock shall be entitled to a proportionate share of any such dividend or other distribution as though the holders of the Series C Preferred Stock were the holders of the number of shares of Common Stock of the Corporation into which their respective shares of Series C 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 other distribution.

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**SECTION 3. *Liquidation Preference.***

3.1 In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series C Preferred Stock shall be entitled to receive at the same time and on parity with the Series B Preferred Stock, but prior and in preference to the holders of Series A Preferred Stock, Common Stock or any other capital stock junior to the Series C Preferred Stock as to liquidation, the amount of one times the Original Purchase Price (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued or declared but unpaid dividends, if any, on such share, for each share of Series C Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B and C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts to which they are entitled, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B and C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

3.2 After payment to the holders of Series B and C Preferred Stock of the full preferential amounts to which they are entitled, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to the holders of Common Stock or any other capital stock junior to the Series A Preferred Stock as to liquidation, the preferential amount per share of Series A Preferred Stock which each such holder is entitled to receive.

3.3 After payment to the holders of Series A Preferred Stock of the full preferential amount which they are entitled to receive, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed among the holders of the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock in proportion to the shares of Common Stock held by them and the shares of Common Stock which they then have the right to acquire upon conversion of the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock then held by them, until the amount received by each holder of Series C Preferred Stock pursuant to this Section 3.3 equals \$0.3621 per share of Series C Preferred Stock (as adjusted for any stock dividends, combinations, or splits with respect to such series).

3.4 After payment to the holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock of the amounts set forth in Section 3.3 above, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed among the holders of the Common Stock and Series A Preferred Stock in proportion to the shares of Common Stock held by them and the shares of Common Stock which they then have the right to acquire upon conversion of the shares of Series A Preferred Stock then held by them.

3.5 For purposes of this Section 3, (i) any acquisition of the Corporation by means of merger or other form of corporate reorganization in which outstanding shares

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of the Corporation are exchanged for securities or other consideration issued by another entity (other than a mere reincorporation transaction or other transaction in which the holders of the voting securities of the Corporation immediately prior to such merger or reorganization own more than 50% of the surviving entity's voting securities immediately after such merger or reorganization) or (ii) a sale of all or substantially all of the assets of the Corporation, shall be treated as a liquidation, dissolution, or winding up of the Corporation and shall entitle the holders of Series C Preferred Stock to their liquidation preference set forth herein provided the aggregate transaction value is less than US \$10 million.

3.6 Whenever the distribution provided for in this Section 3 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board of Directors.

#### SECTION 4. *Redemption.*

4.1 Upon the affirmative vote of the holders of at least 50% of the outstanding shares of Series C Preferred Stock, beginning on the fifth anniversary date of the first issuance of any shares of Series C Preferred Stock (the "Original Issue Date"), to the extent permitted by law, the Corporation shall redeem all the outstanding shares of Series C Preferred Stock in three equal annual installments for an aggregate redemption price per share equal to the Original Purchase Price (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all declared or accumulated but unpaid dividends on such shares (the "Series C Redemption Price"). The holders of Series C Preferred Stock shall approve a mandatory redemption pursuant to this Section 4.1 at a meeting or by written consents without a meeting held or obtained in accordance with the Corporation's Articles of Incorporation and Bylaws. Subject to applicable law, the first redemption date shall be not later than 90 days after the Corporation's receipt of written notice that the holders of Series C Preferred Stock have duly approved the redemption, and the second and third redemption dates shall be on the first and second anniversary dates of the first redemption date (each, a "Redemption Date"). The Corporation shall select the shares to be redeemed ratably among the holders of record, based on the number of shares of Series C Preferred Stock held by each.

4.2 At least 15 but no more than 30 days prior to each Redemption Date, written notice shall be mailed first class postage prepaid, to each holder of record (at the close of business on the day next preceding the day on which notice is given) of the Series C Preferred Stock to be redeemed, at the address last shown on the Corporation's books for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed on such 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 certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in Section 4.3, on or after the Redemption Date, each holder of Series C Preferred Stock to be redeemed shall surrender to this Corporation

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the 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 paid to the order of the person whose name appears on such 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.

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

4.4 If the Corporation has called the Series C Preferred Stock for redemption but funds of the Corporation legally available for redemption are insufficient to redeem (1) the Series C Preferred Stock required to be redeemed on a Redemption Date and (2) shares of Series A Preferred Stock, Series B Preferred Stock or other capital stock that the Corporation is then required to redeem, those funds which are legally available will be used to redeem shares owned by the holders of such Series C Preferred Stock and such other stock called for redemption, pro rata based on the relative amounts of the aggregate redemption prices otherwise payable to each such holder to the extent that sufficient funds are not available to redeem all such shares.

4.5 For purposes hereof, funds legally available to redeem Series B Preferred Stock or Series C Preferred Stock means funds that may lawfully be applied to redeem the Series B Preferred Stock or Series C Preferred Stock, but shall exclude any funds the payment of which would cause the Corporation to have less than \$500,000 cash if applied to redeem shares of the Corporation's capital stock.

4.6 On or prior to each Redemption Date, the Corporation shall deposit the Redemption Price of all shares of Series C Preferred Stock designated for the redemption in the Redemption Notice and not yet redeemed 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.

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and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay the Redemption Price for such shares to the respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered his share certificate to the Corporation pursuant to Section 4.2 above.

4.7 As of the Redemption Date, the deposit shall constitute full payment of the shares designated in the Redemption Notice to their holders, and from and after the Redemption Date the shares so called for redemption shall be redeemed and shall be deemed 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 right to receive from the bank or trust corporation payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any monies deposited by the Corporation pursuant to this Section 4.7 for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 6.1 hereof prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any monies deposited by the Corporation pursuant to this Section 4.7 remaining unclaimed at the expiration of two (2) years following the Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

#### SECTION 5. *Voting Rights; Directors*

5.1 Each holder of shares of the Series C Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series C Preferred Stock could be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Series C Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

5.2 The total number of directors shall not be increased above five without the vote or consent of the holders of the outstanding shares of Series B Preferred Stock. The holders of the Series B Preferred Stock shall be entitled to elect one director (the "Series B Director"). The holders of the Series C Preferred Stock shall be entitled to elect one director (the "Series C Director"). The holders of the Series A Preferred Stock and the holders of the Common Stock, voting together as a single class, shall be entitled to elect two directors. The remaining director shall be elected by a vote of (1) the holders of Series B and C Preferred Stock, and (2) the holders of the Series A Preferred Stock and the holders of the Common Stock, voting together as a single class

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(with such election requiring the approval of both (1) and (2) each voting as a separate class).

5.3 In the case of any vacancy in the office of a director occurring among the directors, the vacancy shall be filled by the remaining directors elected by the voting group(s) that elected the departed director, or if there are no such remaining directors, by the voting group(s) that elected the departed director.

5.4 Unless otherwise specifically provided herein, whenever the vote or consent of the holders of the Series C Preferred Stock is required as a single class, such vote or consent shall require the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series C Preferred Stock.

#### SECTION 6. *Conversion.*

6.1 The holders of the Series C Preferred Stock shall have conversion rights as set forth in this Section 6.

6.2 *Right to Convert.* Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share and prior to the time that there shall have been distributed with respect to such share the full preferential amount to which such share is entitled pursuant to Section 3.3, 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 by dividing the Original Purchase Price, plus any accrued but unpaid dividends accrued prior to the date of conversion, by the Series C Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Common Stock shall be delivered upon conversion of shares of the Series C Preferred Stock (the "Series C Conversion Price") shall initially be the Original Purchase Price per share of Common Stock, or \$0.3621 per share. Such Initial Series C Conversion Price shall be adjusted as hereinafter provided.

6.3 *Automatic Conversion.* Each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective Series C Conversion Price upon the earlier of (1) the date specified by vote or written consent of holders of at least 50% of the shares of Series C Preferred Stock then outstanding, or (2) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), other than a registration relating solely to a transaction under Rule 146 under the Securities Act (or any successor thereto) or to an employee benefit plan of the Corporation, at a public offering price (prior to underwriters' discounts and expenses) equal to or exceeding \$2.84 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), provided that the aggregate public offering price of the shares sold by the Corporation is at least \$10 million.



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#### 6.4 *Mechanics of Optional Conversion.*

(a) Before any holder of Series C Preferred Stock will be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notification at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series C Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he 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 surrender of the shares of Series C 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 on such date.

(b) If the conversion is in connection with an underwriting of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series C Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sales of the securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of the Series C Preferred Stock shall not be deemed to have converted such Series C Preferred Stock until immediately prior to the closing of such sale of securities.

#### 6.5 *Adjustments to Series C Conversion Price for Certain Diluting Issues.*

(a) If and whenever the Corporation issues or sells, or in accordance with this Section 6.5 is deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Series C Conversion Price in effect immediately prior to the time of such issue or sale, then immediately upon such issue or sale or deemed issue or sale, the Series C Conversion Price shall be reduced to an amount determined by dividing (a) the sum of (i) the product derived by multiplying the Series C Conversion Price in effect immediately prior to such issue or sale by the number of shares of Common Stock Deemed Outstanding (as defined below) immediately prior to such issue or sale, plus (ii) the consideration, if any, received by the Corporation upon such issue or sale, by (b) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale. "Common Stock Deemed Outstanding" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding assuming exercise and/or conversion of the Corporation's Options (as defined below) and Convertible Securities (as defined below), whether or not such Options or Convertible Securities are actually exercisable at such time.

(b) Notwithstanding any provision of this Section 6.5(a), there shall be no adjustment to the Series C Conversion Price hereunder with respect to:

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(1) the issuance or deemed issuance of Common Stock or Options to employees, officers, directors or consultants of the Corporation and its subsidiaries pursuant to stock incentive plans or arrangements approved by a majority of the Board of Directors, including the Series B Director;

(2) issuances to equipment lessors, banks or institutional credit sources pursuant to plans or arrangements approved by a majority of the Board of Directors, including the Series B Director;

(3) issuances to third parties in connection with acquisitions or strategic alliances pursuant to plans or arrangements approved by a majority of the Board of Directors, including the Series B Director;

(4) any adjustment to the conversion price of the Series A Preferred Stock or Series B Preferred Stock;

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

(6) any dividend or distribution on Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(7) the exercise or conversion of Options or Convertible Securities outstanding on the Original Issue Date; or

(8) any event for which adjustment of the Series C Conversion Price is made pursuant to Section 6.7 or Section 6.8.

**6.8 Effect on Conversion Price of Certain Events.** For purposes of determining the adjusted Series C Conversion Price under Section 6.5 above, the following shall be applicable:

(a) *Issuance of Rights or Options.* If the Corporation in any manner grants or sells any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities (as defined below) ("Options") and the price per share for which Common Stock is issuable upon the exercise of such Options, or upon conversion or exchange of any stock or securities directly or indirectly convertible into or exchangeable for Common Stock ("Convertible Securities") issuable upon exercise of such Options, is less than the Series C Conversion Price in effect immediately prior to the time of the granting or sale of such Options, 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 the exercise of such Options shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Options for such price per share. For purposes of this paragraph the "price per share for which Common Stock is issuable" shall be determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of such Options, plus the aggregate amount of additional consideration

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payable to the Corporation upon exercise of all such Options, plus in the case of such Options which are exercisable for Convertible Securities, the aggregate amount of additional consideration, if any, payable to the Corporation upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (B) the total number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of the Conversion Price shall be made when Convertible Securities are actually issued upon the exercise of such Options or when Common Stock is actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(b) *Issuance of Convertible Securities.* If the Corporation in any manner issues or sells any Convertible Securities and the price per share for which Common Stock is issuable upon conversion or exchange thereof is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (A) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (B) the total number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Conversion Price shall be made when Common Stock is actually issued upon the conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustments of the Conversion Price had been or are to be made pursuant to other provisions of Section 8.5 no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(c) *Change in Options Price or Conversion Rate.* If the purchase price provided for in any Options, the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Series C Conversion Price in effect at the time of such change shall be immediately adjusted to the Series C Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold.

(d) *Treatment of Expired Options and Unexercised Convertible Securities.* Upon the expiration of any Options or the termination of any right to convert or exchange any Convertible Securities without the exercise of any such Options or rights, the Series C Conversion Price then in effect hereunder shall be adjusted immediately to the Series C Conversion Price which would have been in effect at the time of such expiration or termination had such Options or Convertible Securities, to the

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extent outstanding immediately prior to such expiration or termination, never been issued.

(e) *Calculation of Consideration Received.* If any Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor (determined prior to any underwriting discounts and expenses). If any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Corporation shall be the closing price thereof as of the date of receipt (in each case determined prior to any underwriting discounts and expenses). If any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash and publicly traded securities shall be determined in good faith by the Board of Directors.

(f) *Integrated Transactions.* In case any Options are issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options shall be deemed to have been issued for such consideration as shall be determined in good faith by the Board of Directors.

(g) *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 or any subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(h) *Record Date.* If the Corporation takes a record of the holders of 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 in Convertible Securities, then such record date shall be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

6.7 *Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock.* In the event that this Corporation at any time or from time to time after the Original Issue Date shall declare or pay without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common

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Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Series C Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that this Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

**6.8 Adjustments for Reclassifications and Reorganizations.** If the Common Stock issuable upon conversion of the Series C Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 6.7 above or a merger or other reorganization referred to in Section 6.11 below), the Series C Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series C Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series C Preferred Stock immediately before that change.

**6.9 No Impairment.** The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in carrying out all the provisions of this Section 6 and in the taking of all such actions as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series C Preferred Stock against impairment.

**6.10 Certificates as to Adjustments.** Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 6, 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 C Preferred Stock, as the case may be, a certificate executed by the Corporation's President or Chief Financial Officer setting forth 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 C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series C Conversion Price at the time in effect, and (iii) the number of shares of Common Stock

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and the amount, if any, of other property which at the time would be received upon the conversion of the Series C Preferred Stock.

**6.11 *Notices of Record Date.*** In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease, or convey all or substantially all of its assets or liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Series C Preferred Stock:

(a) At least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any in respect of the matters referred to in (iii) and (iv) above; and

(b) In the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

**6.12 *Issue Taxes.*** The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of the Series C Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

**6.13 *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 the Series C 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 the Series C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series C Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Articles.

**6.14 *Fractional Shares.*** No fractional shares shall be issued upon the conversion of any share or shares of Series C Preferred Stock. All shares of Common

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Stock (including fractions thereof) issuable upon conversion of more than one share of Series C Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

6.15 *Notices.* Any notice required by the provisions of this Section 6 to be given to the holders of shares of Series C Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, or if sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at such holder's address or facsimile number appearing in the records of the Corporation.

#### SECTION 7. *Restrictions and Limitations.*

7.1 So long as any shares of Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of the Preferred Stock, voting together as a single class:

(a) Amend the Articles of Incorporation (other than amending the terms of a series of Preferred Stock with the required consent of the holders of such series in a manner that does not adversely affect the holders of shares of any other series of Preferred Stock or creating an additional series of Preferred Stock under Section V(3) of the Articles of Incorporation so long as such series is not expressly prohibited herein);

(b) Effect a merger, consolidation, statutory share exchange or similar transaction or a sale of all or substantially all the Corporation's assets (unless the beneficial owners of the Corporation's voting securities immediately before any such transaction or sale beneficially own more than 50% of the voting securities of the entity resulting from such transaction or the buyer in such sale);

(c) Liquidate or dissolve; or

(d) Redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any stock; provided, however, that this restriction shall not apply to:

- (1) the repurchase of shares of stock from employees of the Corporation or any subsidiary pursuant to agreements under which the Corporation is required to repurchase such shares;
- (2) redemptions or conversions of Series A Preferred Stock made in compliance with the Articles of Incorporation as in effect on the Original Issue Date and with Section 4 herein;

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- (3) redemptions or conversions of Series B Preferred Stock made in compliance with the Articles of Incorporation as in effect on the Original Issue Date and with Section 4 herein; or
- (4) redemptions or conversions of Series C Preferred Stock on the terms and conditions set forth herein.

7.2 So long as any shares of Series C Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the outstanding shares of the Series C Preferred Stock:

(a) Alter the rights, preferences or privileges of the Series C Preferred Stock, including, without limitation, any amendment to the Corporation's Articles of Incorporation or Bylaws that would:

- (1) Reduce the dividend rates on the Series C Preferred Stock provided for herein, make such dividends non-cumulative, or defer the date from which dividends will accrue, or cancel accrued and unpaid dividends, or adversely change the relative seniority rights of the holders of the Series C Preferred Stock as to the payment of dividends in relation to the holders of any other capital stock of the Corporation;
- (2) Reduce the amount payable to the holders of the Series C Preferred Stock upon the voluntary or involuntary liquidation, dissolution, or winding up of the Corporation, or adversely change the relative seniority of the liquidation preferences of the holders of the Series C Preferred Stock to the rights upon liquidation of the holders of any other capital stock of the Corporation;
- (3) Delay any of the Redemption Dates provided for in Section 4.1; hereof;
- (4) Make the Series C Preferred Stock redeemable at the option of the Corporation;
- (5) Cancel or modify the conversion rights of that series provided for in Section 6 hereof;
- (6) Increase or decrease the authorized number of shares of Series C Preferred Stock, except as permitted by Section 8;
- (7) Create any new class or series of stock of the Corporation which has priority over the Series C Preferred Stock with respect to dividends or liquidation; or



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- (8) Issue any shares of stock of the Corporation that have priority over the Series C Preferred Stock with respect to dividends or liquidation.

**SECTION 8. No Reissuance of Series C Preferred Stock.**

8.1 No share or shares of Series C Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and restored to the status of authorized but unissued shares of Preferred Stock, without designation as to series.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed under seal in its name and on its behalf by its President on this 13<sup>th</sup> day of June, 2005.

IMAGINAIL CORPORATION

By:   
Name: Michael R. Weber  
Title: President