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DIVISION OF CORPORATIONS

**BASIC AMENDMENT**

**PENTHOUSE INTERNATIONAL, INC.**

Certificate of Status	0
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Page Count	54
Estimated Charge	\$43.75

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**SEVENTH AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
PENTHOUSE INTERNATIONAL, INC.**

The original Articles of Incorporation were filed with the Secretary of State on December 11, 2001. The Third Amended and Restated Articles of Incorporation were filed with the Secretary of State on December 31, 2003. The Fourth Amended and Restated Articles of Incorporation were filed with the Secretary of State on April 22, 2004. The Fifth Amended and Restated Articles of Incorporation were filed with the Secretary of State on August 17, 2004. The Sixth Amended and Restated Articles of Incorporation were filed with the Secretary of State on October 5, 2004 and a Certificate of Correction to the Sixth Amended and Restated Articles of Incorporation were filed with the Secretary of State on October 6, 2004.

These Seventh Amended and Restated Articles of Incorporation are being filed with the Secretary of State in order to change the name of the Corporation.

**ARTICLE I**

**NAME**

The name of the corporation is PHSL WORLDWIDE, INC. (hereinafter called the "Corporation").

**ARTICLE II**

**PURPOSES**

The purposes of the Corporation shall be to engage in any activities or businesses permitted under the laws of the United States of America and the State of Florida.

**ARTICLE III**

**PRINCIPAL OFFICE**

The address of the principal office and the mailing address of the Corporation is 11 Penn Plaza, New York, New York 10001.

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#### ARTICLE IV

##### AUTHORIZED CAPITAL STOCK

The maximum number of shares of all classes of capital stock which the Corporation is authorized to issue is Two Billion Five Hundred Million (2,500,000,000) shares, consisting of (i) Two Billion Four Hundred and Fifty Million (2,450,000,000) shares of common stock, par value \$0.0025 per share (the "Common Stock"), and (ii) Fifty Million (50,000,000) shares of preferred stock, par value \$0.0025 per share (the "Preferred Stock").

#### ARTICLE V

##### PREFERRED STOCK

5.1 Terms as Determined by Board of Directors. The Preferred Stock may be issued from time to time in one or more classes or series, the shares of each class or series to have such designations, powers, preferences, rights, qualifications, limitations and restrictions as are stated and expressed herein and in the resolution or resolutions providing for the issue of such class or series adopted by the Corporation's Board of Directors (the "Board of Directors").

5.2 Authority of Board of Directors. Authority is hereby expressly granted to and vested in the Board of Directors to authorize the issuance of the Preferred Stock from time to time in one or more classes or series, to determine and take necessary proceedings fully to effect the issuance and redemption of any such Preferred Stock and with respect to each class or series of the Preferred Stock, to fix and state by the resolution or resolutions providing for the issuance thereof the following:

(a) whether or not the class or series is to have voting rights, full or limited, or is to be without voting rights;

(b) the number of shares to constitute the class or series and the designations thereof;

(c) the preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations of restrictions thereof, if any, with respect to any class or series;

(d) whether or not the shares of any class or series shall be redeemable and, if redeemable, the redemption price or prices and the time or times at which, and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;

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(e) whether or not the shares of a class or series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement and, if such retirement or sinking fund or funds are established, the annual amount thereof and the term and provisions relative to the operation thereof;

(f) the dividend rate, if any, whether dividends are payable in cash, stock of the Corporation or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of dividends payable on any other class or classes or series of stock, whether or not such dividend shall be cumulative or non-cumulative and, if cumulative, the date or dates from which such dividends shall accumulate;

(g) the preferences, if any, and the amounts thereof which the holders of any class or series thereof shall be entitled to receive upon the voluntary or involuntary dissolution of, or upon any distribution of the assets of, the Corporation;

(h) whether or not the shares of any class or series shall be convertible into, or exchangeable for, the shares of any other class or classes or of any other series of the same or any other class or classes of stock of the Corporation and the conversion price or prices, the ratio or ratios or the rate or rates at which such conversion or exchange may be made, with such adjustments, if any, as shall be stated, expressed or provided for in such resolution or resolutions; and

(i) such other special rights and protective provisions with respect to any class or series as the Board of Directors may deem advisable.

**5.3 Increase or Decrease of Preferred Stock.** The shares of each class or series of the Preferred Stock may vary from the shares of any other class or series thereof in any or all of the foregoing respects. The Board of Directors may increase the number of shares of the Preferred Stock designated for any existing class or series by a resolution adding to such class or series authorized and unissued shares of the Preferred Stock not designated for any other class or series. Except as otherwise expressly provided in these Restated Articles, the Board of Directors may decrease the number of shares of the Preferred Stock designated for any existing class or series by a resolution, subtracting from such series unissued shares of the Preferred Stock designated for such class or series, and the shares so subtracted shall become authorized, unissued and undesignated shares of the Preferred Stock.

## ARTICLE VI

### TERMS OF PREFERRED STOCK AND COMMON STOCK

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6.1 Definitions. For the purposes of this Article VI and in addition to other terms defined herein, the following definitions shall apply:

6.1.1 "Affiliate" shall have the same meaning as is set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act.

6.1.2 "Capital Lease Obligation" shall mean, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be so required to be capitalized on the balance sheet in accordance with GAAP.

6.1.3 "Control" (including the terms "Controlling," "Controlled By," and "Under Common Control With" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person whether through ownership of voting securities, by contract or otherwise.

6.1.4 "Expense Allocation Agreement" shall mean the expense Allocation Agreement dated as of November 26, 1993, by and among GM, certain Subsidiaries of GM, GMI, and certain Subsidiaries of GMI, as may be amended from time to time.

6.1.5 "Fair Market Value" shall mean, as it relates to Common Stock of the Corporation, on the date of determination of such Fair Market Value, the average of the three lowest closing per share bid prices of the Common Stock of the Corporation, as then traded on the OTC-Bulletin Board®, the Nasdaq National Market®, the Nasdaq Small Cap Market®, the New York Stock Exchange or the American Stock Exchange (collectively, a "National Securities Exchange"), over the ten (10) trading days immediately prior to such date of determination.

6.1.6 "GAAP" shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

6.1.7 "GM" shall mean General Media, Inc., a Delaware corporation.

6.1.8 "GMI" shall mean General Media International, Inc., a New York corporation.

6.1.9 "Indebtedness" shall mean, any indebtedness or purchase money obligations of the Corporation or any Subsidiary whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit for reimbursement agreements in respect thereof) or representing Capital Lease Obligations or the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable, if

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and to the extent any of the foregoing indebtedness would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP.

6.1.10 "Intellectual Property" shall mean all worldwide trademarks, trademark applications, trade names, service marks, service mark applications, copyright, copyright applications, and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records.

6.1.11 "Permitted Repurchase" shall mean any repurchase of Common Stock by the Corporation from employees, officers, directors, consultants, independent contractors, advisors, other persons performing services for the Corporation in accordance with any stock purchase plan, agreement or other arrangement pursuant to which the Corporation is entitled to an option or other right to repurchase such stock.

6.1.12 "Person" shall mean any individual, corporation, limited liability company, partnership, association, trust or other entity or organization.

6.1.13 "Restated Articles" shall mean these Fourth Amended and Restated Articles of Incorporation of the Corporation.

6.1.14 "Subsidiary" of a Person shall mean any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are owned directly or indirectly by the Person.

6.1.15 "Stated Value" shall mean the stated dollar value per share payable in respect of each of the authorized and issued series of Preferred Stock of the Corporation, as applicable, in connection with any Liquidation Event (as hereinafter defined in Section 6.2.4), redemption or other sale or disposition of such series of Preferred Stock.

6.1.16 "Tax Sharing And Indemnification Agreement" shall mean the Tax Sharing and Indemnification Agreement dated as of December 20, 1993, by and among GM, certain Subsidiaries of GM, GMI and certain Subsidiaries of GMI, as may be amended from time to time.

6.1.17 "Transfer of Control" shall mean the occurrence of any one of the following events: (a) the sale, conveyance, exchange or disposition (collectively, "Transfer") of all or substantially all of the assets of the Corporation, (b) the Transfer of all or substantially all of the assets of all or substantially all of the Subsidiaries of the Corporation, (c) the consummation of a transaction or series of related transactions (whether by tender offer, merger, consolidation or like combination) in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, or (d) the consolidation or merger of the Corporation with or into any other Person or Persons that is not under the Control of or an Affiliate of The Molina-Vector Investment Trust or another Affiliate of Dr. Luis Enrique Fernando Molina Galeana.

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## 6.2 Series A Preferred Stock and Series B Preferred Stock

6.2.1 Designation and Stated Value. The Board of Directors of the Corporation, pursuant to the authority granted in Section 5.2 of Article V hereof, created two series of Preferred Stock designated as "Series A Preferred Stock" and "Series B Preferred Stock," respectively. The Series A Preferred Stock shall have a Stated Value of one thousand dollars (\$1,000) per share (the "Series A Stated Value") and the Series B Preferred Stock shall have a Stated Value of one thousand dollars (\$1,000) per share (the "Series B Stated Value").

6.2.2 Number. The number of shares of Series A Preferred Stock the Corporation is authorized to issue is 5,000 shares of Series A Preferred Stock. The number of shares of Series B Preferred Stock the Corporation is authorized to issue is 5,000 shares of Series B Preferred Stock. Such numbers may be increased or decreased by resolution of the Board of Directors; provided, however, that no decrease shall reduce the number of shares of Series A Preferred Stock or Series B Preferred Stock to a number less than that of the respective number of shares then outstanding.

### 6.2.3 Dividend Rights.

6.2.3.1 Dividend Preference. Except with respect to Permitted Repurchases, the holders of the then outstanding Series A Preferred Stock shall be entitled to receive, when, as and if dividends shall be declared by the Board of Directors, out of any funds and assets of the Corporation legally available to be distributed to the Corporation's shareholders (the "Available Funds and Assets"), non-cumulative dividends in an aggregate amount equal to five percent (5%) of the total amount of dividends that is declared by the Board of Directors (the "Total Declared Dividends"). The holders of the then outstanding Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the Available Funds and Assets, non-cumulative dividends in an aggregate amount equal to five percent (5%) of the Total Declared Dividends. Payments of any dividends to the holders of Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock shall be paid pro rata, on as equal priority, pari passu basis according to their respective dividend preferences as set forth herein. Dividends on Series A Preferred Stock and Series B Preferred Stock shall not be mandatory, and no rights or interest shall accrue to the holders of Series A Preferred Stock or Series B Preferred Stock by reason of the fact that the Corporation shall fail to declare or pay dividends on either such series of Preferred Stock in the amount of the respective annual dividend rate for each such series or in any other amount in any fiscal year of the Corporation, whether or not the earnings of the Corporation in any fiscal year were sufficient to pay such dividends in whole or in part.

6.2.3.2 No Participation Rights. Other than pursuant to Section 6.2.3.1 above, the Series A Preferred Stock and the Series B Preferred Stock shall not be entitled to participate in any dividends declared by the Board of Directors. The holders

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of Series C Preferred Stock and Series D Preferred Stock shall be entitled to participate in dividends declared by the Board of Directors, to the extent hereinafter provided in these Restated Articles.

**6.2.3.3 Non-Cash, Non-Common Stock Dividends.** Whenever a dividend provided for in this Section 6.2.3.3 shall be payable in property other than cash or Common Stock, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors. Whenever a dividend shall be payable in Common Stock, the value of such dividend shall be determined based on its Fair Market Value.

**6.2.4 Liquidation Rights.** If the Corporation shall commence a voluntary case under the federal bankruptcy laws or any, other applicable federal or state bankruptcy, insolvency or similar law, or consent to the entry of an order for relief in an involuntary case under any law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or if a decree or order for relief in respect of the Corporation shall be entered by a court having jurisdiction in the premises in an involuntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency or similar law resulting in the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and any such decree or order shall be unstayed and in effect for a period of thirty (30) consecutive days and, on account of any such event, the Corporation shall liquidate, dissolve or wind up, or if the Corporation shall otherwise liquidate, dissolve or wind up (each such event being considered a "Liquidation Event"), the Available Funds and Assets shall be distributed in the following manner:

**6.2.4.1 Series A Preferred Stock.** Subject to (a) the prior payment in full of the liquidation preference of the Series C Preferred Stock, as provided below, and (b) pro-rata payments on a pari passu basis with the holder(s) of Series B Preferred Stock and Series D Preferred Stock, as provided below, the holders of the Series A Preferred Stock then outstanding shall be entitled to be paid, out of the remaining Available Funds and Assets, if any, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an aggregate amount equal to the Series A Stated Value for each outstanding share of Series A Preferred Stock. If upon a Liquidation Event, and after payment in full of the preferential amount specified for the Series C Preferred Stock, the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series A Preferred Stock of their full preferential amount described in this subsection, then all of the remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock on a pro rata pari passu basis, according



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to the number of outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock held by each holder thereof.

**6.2.4.2 Series B Preferred Stock.** Subject to (a) the prior payment in full of the liquidation preference of the Series C Preferred Stock, as provided below, and (b) pro-rata payments on a pari passu basis with the holder(s) of Series B Preferred Stock and Series D Preferred Stock, as provided below, the holder(s) of Series B Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an aggregate amount equal to the Series B Stated Value for each outstanding share of Series B Preferred Stock. If upon a Liquidation Event, the Available Funds and Assets to be distributed to the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such shareholders of their full preferential amount described in this subsection, then all of the remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock on a pro rata pari passu basis, according to the number of outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock held by each holder thereof.

**6.2.4.3 Remaining Assets.** If there are any Available Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) to the holders of the Preferred Stock of their full preferential amounts described in Sections 6.3.1 and 6.5.2 above, then all such remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Common Stock pro rata according to the number of shares of Common Stock held by each holder thereof.

**6.2.4.4 Merger or Sale of Assets.** At the option of the holders of the Series A Preferred Stock and the holders of Series B Preferred Stock, respectively, with each such series voting as a separate series, upon the occurrence of a Transfer of Control, a "Liquidation Event" under these Restated Articles shall be deemed to have occurred, in which event the Corporation shall be required to distribute, upon consummation of and as a condition to such Transfer of Control, an amount equal to the Stated Value liquidation preference with respect to each outstanding share of Series A Preferred Stock and Series B Preferred Stock in accordance with and subject to the priorities in respect of the Series C Preferred Stock, pari passu rights in respect of the Series D Preferred Stock and other terms of this Section 6.2.4; provided, however, that all holders of Series A Preferred Stock and all holders of Series B Preferred Stock, respectively, shall be deemed, to elect the option set forth above if at least a majority in interest of the holders of shares of their respective series, with each such series voting as a separate series, elect such option.

**6.2.4.5 Non-Cash Consideration.** If any assets of the Corporation distributed to shareholders in connection with any Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined by the Board

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of Directors in good faith, except that any securities to be distributed to shareholders in connection with a Liquidation Event shall be valued as follows:

(a) The method of valuation of securities not subject to investment representation letter or other similar restrictions on free marketability shall be as follows:

(i) unless otherwise specified in a definitive agreement for the acquisition of the Corporation, if the securities to be distributed are shares of Common Stock of the Corporation or other securities that are traded on a National Securities Exchange, the same shall be determined based on its then Fair Market Value; and

(ii) if there is no public market as described in clause (i) above, then 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 investment letter or other restrictions on free marketability shall be to make a thirty percent (30%) discount from the Fair Market Value to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

#### 6.2.5 Voting Rights.

##### 6.2.5.1 Series A Preferred Stock and Series B Preferred Stock.

Each holder of shares of Series A Preferred Stock or Series B Preferred Stock shall have no voting rights except as otherwise provided by the Florida Business Corporation Act (the "FBCA") and in these Restated Articles.

6.2.5.2 Notice to Holders of Series A Preferred Stock and Series B Preferred Stock. Notwithstanding the above, the Corporation shall provide each holder of Series A Preferred Stock or Series B Preferred Stock with prior notification of any meeting of the stockholders (and copies of proxy materials and other information sent to stockholders). In the event of any taking by the Corporation of a record of its stockholders for the purpose of determining stockholders who are entitled to receive payment of any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire (including by way of merger, consolidation or recapitalization) any share of any class or any other securities or property, or to receive any other right, or for the purpose of determining stockholders who are entitled to vote in connection with any proposed Liquidation Event, the Corporation shall mail a notice to each holder of Series A Preferred Stock or Series B Preferred Stock, at least thirty (30) days prior to (or such shorter period that the Corporation first becomes aware of) the consummation of the transaction or event, whichever is earlier, of the date on which any such action is to be taken for the purpose of such dividend, distribution, right or other event, and a brief

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statement regarding the amount and character of such dividend, distribution, right or other event to the extent known at such time.

6.2.5.3 Approval by Holders of Series A Preferred Stock and Series B Preferred Stock. To the extent that under the FBCA the approval of the holders of Series A Preferred Stock or Series B Preferred Stock, voting separately as a class or series as applicable, is required to authorize a given action of the Corporation, the affirmative approval of the holders of at least a majority of the shares of Series A Preferred Stock or Series B Preferred Stock, respectively, represented by written consent of the holders of a majority of the shares of Series A Preferred Stock or Series B Preferred Stock (except as otherwise may be required under the FBCA) shall constitute the approval of such action by the class or series as applicable. Holders of Series A Preferred Stock and holders of Series B Preferred Stock shall be entitled to notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled to consent, which notice would be provided pursuant to the Corporation's Bylaws and the FBCA.

6.2.6 Conversion Rights.

6.2.6.1 Series A Preferred Stock. The shares of Series A Preferred Stock shall not be convertible into shares of Common Stock.

6.2.6.2 Series B Preferred Stock. The shares of Series B Preferred Stock shall not be convertible into shares of Common Stock.

6.2.7 Redemption. The Corporation shall not have the right to redeem the Series A Preferred Stock or Series B Preferred Stock.

6.2.8 Restrictions Regarding Series A Preferred Stock or Series B Preferred Stock.

6.2.8.1 Protective Provision Regarding Series A Preferred Stock. For so long as shares of Series A Preferred Stock remain outstanding, the Corporation shall not, without the approval of the holders of at least sixty percent (60%) of Series A Preferred Stock then outstanding, in any manner alter or change the terms, designations, powers, preferences or relative, participating, optional or other special rights, or the qualifications, limitations or restrictions, or increase the authorized number of shares of the Series A Preferred Stock.

6.2.8.2 Protective Provisions Regarding Series B Preferred Stock. For so long as shares of Series B Preferred Stock remain outstanding, the Corporation shall not, without the approval of the holders of at least sixty percent (60%) of series B Preferred Stock then outstanding, in any manner alter or change the terms, designations, powers, preferences or relative, participating, optional or other special rights, or the

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qualifications, limitations or restrictions, or increase the authorized number of shares of the Series B Preferred Stock.

### 6.3 Series C Preferred Stock.

6.3.1 Designation and Stated Value. The Board of Directors of the Corporation, pursuant to authority granted in Section 5.2 of Article V hereof, created a Series of Preferred Stock designated as "Series C Preferred Stock." The Company issued shares of Series C Preferred Stock in consideration of the transfer to the Corporation of the equity of a Subsidiary holding certain real estate assets. Upon initial issuance by the Corporation, the price per share of the Series C Preferred Stock and the Stated Value of each share of Series C Preferred Stock upon any Liquidation Event, or otherwise, shall be ten dollars (\$10.00) (the "Series C Stated Value").

6.3.2 Number. The number of shares of Series C Preferred Stock the Corporation is authorized to issue is 11,550,000 shares of Series C Preferred Stock. Such number may be increased or decreased by resolution of the Board of Directors.

### 6.3.3 Dividend Rights.

6.3.3.1 Dividend Preference. Except with respect to Permitted Repurchases, the holders of the then outstanding series C Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any funds and assets of the Corporation generated from the sale of the "Property" (as that term is defined in the Membership Interests Purchase Agreement between the Corporation and Del Sol Investments GP), which funds and assets, after paying off all obligations and indebtedness of the Corporation, are then legally available to be distributed to the Corporation's shareholders cumulative dividends in an aggregate amount equal to four percent (4%) of the sum of (i) the Stated Value of the Series C Preferred Stock, plus (ii) the aggregate amount of then accrued but unpaid dividends on the Series C Preferred Stock. The Series C Preferred Stock accrued dividend shall be paid quarterly in kind by the issuance of additional shares of Common Stock of the Corporation determined by dividing (A) the dollar amount of such accrued dividend, by (B) the Fair Market Value of the Corporation's Common Stock.

6.3.3.2 No Participation Rights. Other than pursuant to Section 6.3.3.1 above, the Series C Preferred Stock shall not be entitled to participate in any dividends declared by the Board of Directors. The Series C Preferred Stock holders shall not be entitled to participate in the Common Stock dividends paid to common shareholders.

6.3.3.3 Non-Cash, Non-Common Stock Dividends. Whenever a dividend provided for in this Section 6.3.3.1 shall be payable in property other than cash or Common Stock, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

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### 6.3.4 Liquidation Rights

6.3.4.1 Liquidation, Dissolution or Winding Up. If the Corporation shall commence a Liquidation Event, the Available Funds and Assets shall be distributed in the following manner:

6.3.4.2 Senior Liquidation Preference. Upon the occurrence of any Liquidation Event, the holder(s) of the issued and outstanding shares of Series C Preferred Stock shall be entitled to be paid a liquidation preference at the Series C Stated Value per share, out of the Available Funds and Assets, senior, prior to, and before any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Series A Preferred Stock, Series B Preferred Stock, Series D Preferred Stock or Common Stock of the Corporation. If, upon a Liquidation Event, the Available Funds and Assets to be distributed to the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such shareholders of their full preferential amount described in this subsection, then all of the Available Funds and Assets shall be distributed among the holders of then outstanding series of such Series C Preferred Stock pro rata, according to the number of outstanding shares of such Series C Preferred Stock held by each holder thereof. The Corporation shall not create, designate or authorize any series of Preferred Stock with liquidation preferences or rights equal to, or senior to, the liquidation preferences and rights held by the holders of the Series C Preferred Stock.

6.3.4.3 All other Shares of Junior Preferred Stock. Subject to payment in full of the Series C Stated Value liquidation preference of the Series C Preferred Stock as provided above, the holder(s) of all other series of Preferred Stock of the Corporation then outstanding shall be entitled to be paid, out of the remaining Available Funds and Assets, if any, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, the amount of any liquidation preference or other payment required under the terms of such Preferred Stock.

6.3.4.4 Remaining Assets. If there are any Available Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) to the holders of the Preferred Stock of their full preferential amounts described in Sections here above, then all such remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Common Stock pro rata according to the number of shares of Common Stock held by each holder thereof.

6.3.4.5 Merger or Sale of Assets. At the option of the holders of the Series C Preferred Stock, with such series voting as a separate series, upon the occurrence of (a) any sale, conveyance or disposition of all the property or substantially all of the assets of either of the Del Sol Entities, or (b) the consummation by the Del Sol Entities of a Transfer of Control, or (c) a transaction or series of related transactions affecting the Corporation that shall constitute a Transfer of Control, for all purposes of these Restated Articles, a Liquidation Event shall be deemed to have occurred; in which

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event the Corporation shall be required to distribute to all holders of the Series C Preferred Stock, upon consummation of and as a condition to such Transfer of Control or other transaction described hereinabove, an amount equal to either (i) the liquidation preference with respect to each outstanding share of Series C Preferred Stock, at the Series C Stated Value per share, in accordance with and subject to the terms of this Section 6.3.4, or (ii) 100% of the issued and outstanding capital stock of the Del Sol Entities, free of any encumbrances or claims, so long as the Del Sol Entities then owns the Del Sol properties and assets, free of any encumbrances other than a Qualified Financing (as hereinafter defined in Section 6.3.8.2); provided, however, that all holders of Series C Preferred Stock shall be deemed to elect the option set forth in clause (i) of this Section 6.3.4.5 if at least a majority in interest of the holders of shares of Series C Preferred Stock, voting as a separate series, elect such option.

**6.3.4.6 Non-Cash Consideration.** If any assets of the Corporation distributed to shareholders in connection with any Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined by the Board of Directors in good faith, except that any securities to be distributed to shareholders in connection with a Liquidation Event shall be valued as follows:

(a) The method of valuation of securities not subject to investment representation letter or other similar restrictions on free marketability shall be as follows:

(i) unless otherwise specified in a definitive agreement for the acquisition of the Corporation, if the securities to be distributed are shares of Common Stock of the Corporation or other securities that are traded on a National Securities Exchange, the same shall be determined based on its then Fair Market Value; and

(ii) if there is no public market as described in clause (i) above, then 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 investment letter or other restrictions on free marketability shall be to make a thirty percent (30%) discount from the Fair Market Value to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

**6.3.5 Voting Rights.** At any regular or special meeting of stockholders of the Corporation called in whole or in part to elect members of the Board of Directors of the Corporation, the holders of a majority of the issued and outstanding shares of Series C Preferred Stock, present in person or by proxy at such stockholders' meeting, shall have the right, voting as a separate class, to elect to the Board of Directors of the Corporation such number of Persons who shall constitute an absolute majority of the members of the entire Board of Directors of the Corporation (the "Board Majority"). The holders of a majority of the issued and outstanding shares of Series C Preferred Stock

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shall also have the right to fill any vacancies on the Board of Directors of the Corporation or to increase the number of members of the Board of Directors of the Corporation to maintain a Board Majority. The remaining members of the Board of Directors of the Corporation shall be elected, at any regular or special meeting of stockholders of the Corporation called in whole or in part to elect members of the Board of Directors of the Corporation, by the holders of a majority of the issued and outstanding shares of Common Stock present in person or by proxy at such stockholders' meeting.

(a) Notice to Holders of Series C Preferred Stock The Corporation shall provide each holder of Series C Preferred Stock with prior notification of any meeting of the stockholders (and copies of proxy materials and other information sent to stockholders). In the event of any taking by the Corporation of a record of its stockholders for the purpose of determining stockholders who are entitled to receive payment of any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire (including by way of merger, consolidation or recapitalization) any share of any class or any other securities or property, or to receive any other right, or for the purpose of determining stockholders who are entitled to vote in connection with any proposed Liquidation Event, the Corporation shall mail a notice to each holder of Series C Preferred Stock, at least thirty (30) days prior to (or such shorter period that the Corporation first becomes aware of) the consummation of the transaction or event, whichever is earlier, of the date on which any such action is to be taken for the purpose of such dividend, distribution, right or other event, and a brief statement regarding the amount and character of such dividend, distribution, right or other event to the extent known at such time.

(b) Rights of Holders of Series C Preferred Stock To the extent that, under the FBCA the approval of the holders of Series C Preferred Stock, voting separately as a class or series as applicable, is required to authorize a given action of the Corporation, and to the extent approval of the holders of Series C Preferred Stock is required for any specific action of the Corporation set forth herein, the affirmative approval of the holders of at least a majority of the shares of Series C Preferred Stock, represented by written consent of the holders of a majority of the shares of Series C Preferred Stock (except as otherwise may be required under the FBCA) shall constitute the approval of such action by the class or series as applicable. Holders of Series C Preferred Stock shall be entitled to notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders), which notice would be provided pursuant to the Corporation's Bylaws and Florida law.

### 6.3.6 Conversion Rights

6.3.6.1 Series C Conversion Price Upon not less than thirty-one (31) days prior written notice by the holders of the Series C Preferred Stock, unless such notice period is waived by the Corporation, all or any portion of the Series C Preferred Stock shall be convertible into shares of Common stock of the Corporation, at the option of the holder, at a conversion price per share, subject to adjustment as provided herein (the "Series C Conversion Price") that shall be equal to (a) the Liquidation Price per share of Series C Preferred Stock, divided by (b) eighty percent (80%) of the Fair Market

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Value of a share of Common Stock; provided, however, subject at all times to the adjustment provisions set forth in Section 6.3.6.2 below, in no event shall such Series C Conversion Price be less than eleven cents (\$0.11) per share. The Series C Conversion Price shall be subject to adjustment as provided in Section 6.3.6.2 below. As used in these Restated Articles, the term Series C Conversion Price shall, at all times, be deemed to mean and include the Series C Conversion Price in effect from time to time, based upon adjustments contemplated by Section 6.3.6.2 below.

6.3.6.2 Adjustments to Series C Conversion Price.

(i) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time, or from time to time after the date shares of the Series C Preferred Stock are first issued (the "Original Series C Issue Date"), effect a subdivision of the outstanding Common Stock, the Conversion Price in effect immediately prior thereto shall be proportionately decreased and, conversely, if the Corporation shall at any time or from time to time after the Original Series C Issue Date combine the outstanding shares of Common Stock, the Series C Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph 6.14.2(i) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(ii) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the Original Series C Issue Date, shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Series C Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series C Conversion Price then in effect by a fraction:

(A) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(B) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series C Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter, the Series C Conversion Price shall be adjusted pursuant to this paragraph 6.14.2(ii) as of the time of actual payment of such dividends or distributions.

(iii) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Series C



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Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of such Series C Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had their Series C Preferred Stock been converted into Common Stock on the date of such event and had thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period giving application to all adjustments called for during such period under this paragraph (iii) with respect to the rights of the holders of the Series C Preferred Stock.

(iv) Adjustments of Series C Conversion Price for Certain Diluting Issues. If at any time after the Original Series C Issue Date, the Corporation issues:

(A) shares of Common Stock at a purchase price per share on the date of issuance thereof that is lower than the Series C Conversion Price in effect at the date of issuance of such Common Stock, *other than* with respect to (x) issuances of Common Stock to officers, directors or employees of, or consultants to, the Corporation pursuant to stock option or stock purchase plans or agreements on terms approved by the Board of Directors, but not exceeding, at any one time, more than five (5%) percent of the fully-diluted shares of Common Stock then issued and outstanding (net of any repurchases of such shares), subject to adjustment for all subdivisions and combinations; (y) issuances of Common Stock in connection with any acquisition, joint venture or similar combination, as full or partial consideration for the assets, securities or properties of any other person, firm or corporation, whether by purchase, exchange, merger, consolidation or like combination; (z) issuances of Common Stock as a dividend or distribution on Series C Preferred Stock; or (aa) other issuances of Common Stock for which adjustment of the Conversion Price is made pursuant to other paragraphs of this Section 6.3.6.2 (collectively, "Non-Dilutive Issuances"); or

(B) warrants, options or other exercisable securities (other than Non-Dilutive Issuances) at an exercise price per share that is lower than the Series C Conversion Price in effect at the date of issuance of such warrants, options or other exercisable securities; or

(C) convertible or exchangeable securities (other than Non-Dilutive Issuances) with a conversion price per share or right to exchange per share that is lower than the Series C Conversion Price in effect at the date of issuance of such convertible or exchangeable securities,

then the Series C Conversion Price shall be reduced to equal the *lowest* of any such lower per share purchase prices, per share exercise prices, per share conversion prices or per share exchange prices, and such adjusted Series C Conversion Price shall apply to any future Conversion Notices received by the Corporation. The Series C Conversion Price,

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as it may exist from time to time, shall not apply retroactively to any shares of Series C Preferred Stock converted to Common Stock prior to any subsequent adjustment to the Series C Conversion Price.

(v) Adjustments for reclassifications, consolidation, merger, splits and combinations. If at any time while the Series C Preferred Stock remains outstanding and any shares thereof have not been converted into Common Stock, in case of any reclassification or change of outstanding Common Stock issuable upon conversion of the Series C Preferred Stock (other than a change in par value per share, or from par value per share to no par value per share, or from no par value per share to par value per share or as a result of a subdivision or combination of outstanding securities issuable upon conversion of the Series C Preferred Stock) or in case of any consolidation, merger or mandatory share exchange of the Corporation with or into another corporation (other than a merger or mandatory share exchange with another corporation in which the Corporation is a continuing corporation and which does not result in any reclassification or change, other than a change in par value per share, or from par value per share to no par value per share, or from no par value per share to par value per share, or as a result of a subdivision or combination of outstanding Common Stock upon conversion of the Series C Preferred Stock), or in the case of any sale or transfer to another corporation of the property of the Corporation as an entirety or substantially as an entirety, the Corporation, or such successor, resulting or purchasing corporation, as the case may be, shall, without payment of any additional consideration therefor, execute a new Series C Preferred Stock providing that the holder shall have the right to convert such new Series C Preferred Stock (upon terms and conditions not less favorable to the holder than those in effect pursuant to the Series C Preferred Stock) and to receive upon such exercise, in lieu of the Common Stock theretofore issuable upon conversion of the Series C Preferred Stock, the kind and amount of shares of stock, other securities, money or property receivable upon such reclassification, change, consolidation, merger, mandatory share exchange, sale or transfer by the holder of the Common Stock issuable upon conversion of the Series C Preferred Stock had the Series C Preferred Stock been converted immediately prior to such reclassification, change, consolidation, merger, mandatory share exchange or sale or transfer. The provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, mandatory share exchanges and sales and transfers.

6.3.7 Redemption. The Series C Preferred Stock Holder shall have no right to require the Corporation to redeem any of the Series C Preferred Stock at any time. Subject at all times to the rights of the holders of Series C Preferred Stock to convert such Series C Preferred Stock into shares of Common Stock provided in Section 6.3.6 above, the Corporation shall have the right to redeem the Series C Preferred Stock at any time by payment in cash of an amount equal to the Liquidation Price. The Corporation shall provide at least thirty (30) days prior written notice (the "Redemption Notice") to the holders of the Series C Preferred Stock of any such redemption, and the holders of the Series C Preferred Stock shall have the right to convert all or any portion of the Series C Preferred Stock into Common Stock prior to any date fixed for redemption (the "Redemption Date"). The Corporation shall be required to redeem all, or

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if specifically permitted hereunder, a portion of the Series C Preferred Stock, in the event, without the prior written consent of the holders of at least 50% of the outstanding Series C Preferred Stock, the Corporation or its Subsidiary shall (ii) issue, sell, transfer or encumber any of the capital stock or assets of Del Sol Investments, LLC or Del Sol Investments SA de CV (Mexico) (collectively, the "Del Sol Entities"), or increase the authorized capital stock of either of Del Sol Entities, or (ii) sell, transfer or encumber either of the Del Sol Entities or any of their assets.

6.3.8 Protective Covenants. For so long as shares of Series C Preferred Stock remain outstanding, the Corporation shall not, nor shall the Corporation permit any of its direct or indirect Subsidiaries to, in each case, without the written consent of either (a) the holders of at least a majority of the Series C Preferred Stock then outstanding, or (b) the affirmative vote or consent of all of the Persons designated by the holders of Series C Preferred Stock as members of the Board of Directors of the Corporation (the "Series C Directors Designees");

6.3.8.1 Create, incur, assume or suffer to exist any lien, encumbrance, mortgage or other security interest (collectively, "Lien") upon or with respect to any of its properties, whether now owned or hereafter acquired: file or suffer to exist under the Uniform Commercial Code or any similar law or statute of any jurisdiction, a financing statement (or the equivalent thereof) that names it as debtor; sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof); sell any of its property or assets subject to an understanding or agreement, contingent or otherwise, to repurchase such property or assets (including sales of accounts receivable) with recourse to it or assign or otherwise transfer any account or other right to receive income, other than mechanics', materialmen's, and other non-material statutory Liens or Liens permitted pursuant to agreements to which the holders of Series C Preferred Stock or its Affiliates are a party ("Permitted Liens");

6.3.8.2 Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to any indebtedness other than a financing permitted pursuant to any agreements to which the holders of Series C Preferred Stock or its Affiliates are a party (a "Qualified Financing");

6.3.8.3 Wind-up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, or convey, sell, lease or sublease, transfer or otherwise dispose of, whether in one transaction or a series of related transactions, all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or purchase or otherwise acquire, whether in one transaction or a series of related transactions, all or substantially all of the assets of any Person (or any division thereof), or agree to do any of the foregoing;

6.3.8.4 Make any change in the nature of the business of the Corporation or any Subsidiary;

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6.3.8.5 Make or commit or agree to make any loan, advance guarantee of obligations, other extension of credit or capital contributions to, or hold or invest in or commit or agree to hold or invest in, or purchase or otherwise acquire or commit or agree to purchase or otherwise acquire any shares of the capital stock, bonds, notes, debentures or other securities of, or make or commit or agree to make any other investment in, any other Person, or purchase or own any futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, except for: (i) investments existing on the date hereof, but not any increase in the amount thereof as set forth in such Schedule or any other modification of the terms thereof, or (ii) loans and advances by it to its Subsidiaries and by such Subsidiaries to it, made in the ordinary course of business;

6.3.8.6 Create, incur or suffer to exist any obligations as lessee (i) for the payment of rent for any real or personal property in connection with any sale and leaseback transaction, or (ii) for the payment of rent for any real or personal property under leases or agreements to lease other than (A) existing leases as at the date hereof, and (B) operating leases which would not cause the aggregate amount of all operating leases owing by the Corporation and all of its Subsidiaries to exceed \$100,000;

6.3.8.7 Make or commit or agree to make any capital expenditure (by purchase made or lease required under GAAP to be capitalized ("Capitalized Leases")) that would cause the aggregate amount of all such capital expenditures arising from purchases made or Capitalized Leases entered into by the Corporation and all of its Subsidiaries to exceed \$100,000;

6.3.8.8 (i) Declare or pay any dividend or other distribution, direct or indirect, on account of any capital stock now or hereafter outstanding, (ii) make any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any capital stock or any direct or indirect parent of the Corporation or any Subsidiary, now or hereafter outstanding, (iii) make any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of capital stock of the Corporation or any Subsidiary, now or hereafter outstanding, (iv) return any Capital Stock to any shareholders or other equity holders of the Corporation or any Subsidiary, or make any other distribution of property, assets, shares of capital stock, warrants, rights, options, obligations or securities thereto as such or (v) pay any management fees or any other fees or expenses (including the reimbursement thereof by the Corporation or any Subsidiary) pursuant to any management, consulting or other services agreement to any of the shareholders or other equity holders of the Corporation or any Subsidiary or other Affiliates, or to any other Subsidiaries or Affiliates of the Corporation or any Subsidiary; provided, however, any Subsidiary of the Corporation may pay dividends to the Corporation;

6.3.8.9 Enter into, renew, extend or be a party to any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any

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kind) with any Affiliate, except (i) in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, (ii) transactions with another Subsidiary;

6.3.8.10 Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act;

6.3.8.11 In any manner alter or change the terms, designations, powers, preferences or relative, participating, optional or other special rights, or the qualifications, limitations or restrictions, or increase the authorized number of shares of the Series C Preferred stock;

6.3.8.12 In any manner authorize, create, designate, issue or sell any class or series of capital stock (including any treasury shares) or rights, options, warrants or other securities convertible into or exercisable or exchangeable for capital stock or any debt security which by its terms is convertible into or exchangeable for any equity security or has any other equity feature or any security that is a combination of debt and equity, and which, in each case, as to the payment of dividends, distribution of assets or redemptions, including, without limitation, distributions to be made upon a liquidation, is senior to or pari passu with the rights of the holders of the Series C Preferred Stock to receive the Liquidation Price from Available Funds and Assets;

6.3.8.13 Reclassify the shares of any class or series of capital stock of the Corporation into shares of any class or series of capital stock ranking, either as to payment of dividends, distributions of assets or redemptions, including, without limitation, distributions to be made upon a liquidation, pari passu or senior to rights of the holders of the Series C Preferred Stock to receive the Liquidation Price from Available Funds and Assets;

6.3.8.14 Amend, restate or otherwise modify the Restated Articles or the Corporation's Bylaws in any manner adversely affecting the rights of the holders of shares of Series C Preferred Stock to receive, the Liquidation Price from Available Funds and Assets;

6.3.8.15 Do any act or thing not authorized or contemplated by the Restated Articles which would result in taxation of the holders of shares of the Series C Preferred Stock under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended);

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6.3.8.16 Sell, transfer, encumber, alienate, mortgage, hypothecate, convey, exchange, assign, transfer or otherwise dispose of (a "Transfer"), any shares of the capital stock of the Del Sol Entities, or issue any new shares of the capital stock of the Del Sol Entities;

6.3.8.17 Transfer (for cash, shares of stock, securities or other consideration) or otherwise dispose of all or substantially all of the property or assets of the Del Sol Entities, or any interest in those certain two real estate properties consisting of approximately 350 ocean-front acres located at the city and harbor of Zihuatanejo, State of Guerrero, Mexico (the "Del Sol Property"), beneficially owned and/or controlled by the Del Sol Entities, to liquidate or dissolve either of the Del Sol Entities, or to merge or consolidate either of the Del Sol Entities into one or more corporations (in each case except for a transaction with The Molina-Vector Investment Trust or an Affiliate of such Person; or

6.3.8.18 Terminate, replace or cause not to be reelected, the directors to be appointed by Del Sol Investments GP.

6.3.9 Affirmative Covenants. The Corporation shall use its best efforts to perform or cause to be performed, diligently and in good faith, each of the following covenants and so long as any of the shares of Series C Preferred Stock shall remain issued and outstanding, unless the holders of a majority of the outstanding shares of Series C Preferred Stock shall otherwise consent in writing:

6.3.9.1 Furnish to the Series C Preferred Stock Holder and each Lender:

(1) as soon as available and in any event within 30 days after the end of each fiscal quarter of the Corporation and its Subsidiaries (A) consolidated balance sheets, consolidated statements of operations and retained earnings and consolidated statements of cash flows of the Corporation and its Subsidiaries, and (B) consolidating balance sheets, consolidating statements of operations and retained earnings and consolidating statements of cash flows of the Corporation and each of its Subsidiaries, in each case, as at the end of such quarter, and for the period commencing at the end of the immediately preceding fiscal year ended December 31<sup>st</sup> (the "Fiscal Year") and ending with the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period of the immediately preceding Fiscal Year, all in reasonable detail and certified by the Chief Financial Officer of the Corporation as fairly presenting, in all material respects, the financial position of the company and its Subsidiaries, as of the end of such quarter and the results of operations and cash flows of the Corporation and its Subsidiaries, for such quarter, in accordance with GAAP applied in manner consistent with that of the most recent audited financial statements of the Corporation and its Subsidiaries furnished to the lenders to the Corporation and its Subsidiaries, subject to normal year-end adjustments;

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(ii) as soon as available, and in any event within 30 days after the end of each fiscal month of the Corporation and its Subsidiaries (A) internally prepared consolidated balance sheets, consolidated statements of operations and retained earnings and consolidated statements of cash flows of the Corporation and its Subsidiaries, and (B) consolidating balance sheets, consolidating statements of operations and retained earnings and consolidating statements of cash flows of the Corporation and each of its Subsidiaries, in each case, as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, all in reasonable detail and certified by the Chief Financial Officer of the Corporation as fairly presenting, in all material respects, the financial position of the Corporation and its Subsidiaries, as at the end of such fiscal month and the results of operations, retained earnings and cash flows of the Corporation and its Subsidiaries, for such fiscal month, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished to the lenders to the Corporation and its Subsidiaries, subject to normal year-end adjustments;

(iii) as soon as possible, and in any event within three (3) days after the occurrence of an event of default or default under any loan or related credit agreement between the Corporation and/or any Subsidiary and a lender or other holders of indebtedness of the Corporation or such Subsidiary or the occurrence of any event or development that could have a material adverse effect on the business, financial condition, assets or prospects of the Corporation or such Subsidiary (a "Material Adverse Effect"), the written statement of the President or Chief Financial Officer of the Corporation setting forth the details of such event of default or default or other event or development that could have a Material Adverse Effect and the action which the affected Person proposes to take with respect thereto;

(iv) promptly after the commencement thereof but in any event not later than 5 days after service of process with respect thereto on, or the obtaining of knowledge thereof by, the Corporation or any Subsidiary, notice of each action, suit or proceeding before any court or other governmental authority or other regulatory body or any arbitrator which, if adversely determined, could have a Material Adverse Effect;

(v) promptly after the sending or filing thereof, copies of all statements, reports and other information the Corporation or any Subsidiary sends to any holders of its indebtedness or its securities or files with the SEC or any national (domestic or foreign) securities exchange;

(vi) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to the Corporation or any Subsidiary by its auditors in connection with any annual or interim audit of the books thereof;

(vii) promptly upon request, copies of all minutes of meetings of the Board of Directors of the Corporation or any Subsidiary and all other

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statements, reports and other information sent by the Board of Directors of the Corporation or any Subsidiary to any Person or submitted by any Person to the Board of Directors of the Corporation or any Subsidiary; and

(viii) promptly upon request, such other information concerning the condition or operations, financial or otherwise, of the Corporation or any Subsidiary as the holders of Series C Preferred Stock may from time to time may reasonably request.

6.3.9.2 Comply, and cause each of its Subsidiaries to comply, in all material respects with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, (i) paying before the same become delinquent, all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any of its properties, and (ii) paying all lawful claims which if unpaid might become a Lien or charge upon any of its properties, except to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

6.3.9.3 Maintain and preserve its existence, rights and privileges, and become or remain duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

6.3.9.4 Keep adequate records and books of account, with complete entries made to permit the preparation of financial statements in accordance with GAAP.

6.3.9.5 Permit the holders of Series C Preferred Stock and their representatives at any time and from time to time during normal business hours, at the expense of the Corporation, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals, or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives. In furtherance of the foregoing, the Corporation hereby authorizes its independent accountants to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the Series C Preferred Stock holders and representatives of the series C Preferred Stock holders.

6.3.9.6 Obtain, maintain and preserve and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations which are necessary or useful in the proper conduct of its business, except



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where the failure to obtain, maintain or preserve such licenses, authorizations, approvals, entitlements and accreditations is not reasonably likely to have a Material Adverse Effect.

6.3.9.7 Take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as the holders of Series C Preferred Stock may require from time to time in order to carry out more effectively the purposes of these Restated Articles, and to better assure, convey, grant, assign, transfer and confirm unto the holders of Series C Preferred Stock the rights now or hereafter intended to be granted to it under these Restated Articles.

#### 6.3.10 Miscellaneous

6.3.10.1 Loss, Theft, Destruction of Preferred Stock. Upon receipt of evidence satisfactory to the Corporation of the loss, theft, destruction or mutilation of shares of Series C Preferred Stock and, in the case of any such loss, theft or destruction, upon receipt of indemnity or security reasonably satisfactory to the Corporation, or, in the case of any such mutilation, upon surrender and cancellation of the Series C Preferred Stock, the Corporation shall make, issue and deliver, in lieu of such lost, stolen, destroyed or mutilated shares of Series C Preferred Stock, new shares of Series C Preferred Stock of like tenor. The Series C Preferred Stock shall be held and owned upon the express condition that the provisions of this Section are exclusive with respect to the replacement of mutilated, destroyed, lost or stolen shares of Series C Preferred Stock and shall preclude any and all other rights and remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement of negotiable instruments or other securities without the surrender thereof.

6.3.10.2 Who Deemed Absolute Owner. The Corporation may deem the Person in whose name the Series C Preferred Stock shall be registered upon the registry books of the Corporation to be, and may treat it as, the absolute owner of the Series C Preferred Stock for the purpose of the conversion of the Series C Preferred Stock and for all other purposes, and the Corporation shall not be affected by any notice to the contrary. All such payments and such conversion shall be valid and effectual to satisfy and discharge the liability upon the Series C Preferred Stock to the extent of the sum or sums so paid or the conversion so made.

6.3.10.3 Register. The Corporation shall keep at its principal office a register in which the Corporation shall provide for the registration of the Series C Preferred Stock. Upon any transfer of the Series C Preferred Stock in accordance with the provisions hereof, the Corporation shall register such transfer on the Series C Preferred Stock register.

6.3.10.4 Reservation of Common Stock. The Corporation shall have a sufficient number of shares of Common Stock available to reserve for issuance upon the conversion of all outstanding shares of Series C Preferred Stock, including the Additional Amount, at an assumed Conversion Price of eleven cents (\$0.11) per share. The Corporation will at all times reserve and keep available out of its authorized

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Common Stock, solely for the purpose of issuance upon the conversion of Series C Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Series C Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued, fully paid and non-assessable. The Corporation will take all such action as may be so taken without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed to have a sufficient number of authorized but unissued shares of Common Stock to issue upon conversion of the Series C Preferred Stock. The Corporation will not take any action which results in any adjustment of the conversion rights if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Series C Preferred Stock would exceed the total number of shares of Common Stock then authorized by the Corporation's Certificate of Incorporation, as amended.

#### 6.4 Series D Preferred Stock

6.4.1 Designation and Stated Value. The Board of Directors of the Corporation, pursuant to the authority granted in Section 5.2 of Article V hereof, has hereby created a new series of Preferred Stock designated as "Series D Preferred Stock." The Stated Value of the Series D Preferred Stock shall be one dollar (\$1.00) per share (the "Series D Stated Value").

6.4.2 Number. The number of shares of Series D Preferred Stock the Corporation is authorized to issue is four million (4,000,000) shares of such series.

6.4.3 Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holder of the Series D Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of Available Funds and Assets of the Corporation, such dividends as may be declared from time to time by the Board of Directors.

#### 6.4.4 Liquidation Rights.

6.4.4.1 Preference upon Liquidation Event. Upon the occurrence of any Liquidation Event, holders of outstanding shares of Series D Preferred Stock shall be entitled to be paid first out of the Available Funds and Assets of the Corporation an amount equal to the Series D Stated Value per share of Series D Preferred Stock held (as adjusted for any stock splits, stock dividends or recapitalizations of the Series D Preferred Stock) and any declared but unpaid dividends on such share, (a) after all payments shall be made to the holders of any outstanding shares of Series C Preferred Stock, (b) pari passu and contemporaneous with any payments that are required to be made to the holders of any outstanding shares of Series A Preferred Stock and Series B Preferred Stock, and (c) before any payment shall be made to the holders of the Common Stock, or any other capital stock of the Corporation ranking junior to the Series D Preferred Stock with regard to any distribution of assets upon liquidation, dissolution or winding up of the

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Corporation in accordance with these Restated Articles. The holders of the Series D Preferred Stock shall be entitled to share ratably, in accordance with the respective preferential amounts payable on such stock, in any distribution which is not sufficient to pay in full the aggregate of the amounts payable thereon. If, upon the occurrence of any Liquidation Event, after priority payments made in respect of the Series C Preferred Stock, the remaining assets to be distributed to the holders of the Series A Preferred Stock, the Series B Preferred Stock and the Series D Preferred Stock shall be insufficient to permit payment to such holders of the full preferential amounts aforesaid, then all of the remaining assets of the Corporation available for distribution to shareholders shall be distributed to the holders of outstanding shares of the Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock, on a pro-rata basis. Each holder of the Series D Preferred Stock shall be entitled to receive that portion of the assets available for distribution as the number of outstanding shares of Series D Preferred Stock held by such holder bears to the total number of shares of Series D Preferred Stock. Such payment shall constitute payment in full to the holders of the Series D Preferred Stock upon the occurrence of a Liquidation Event. After such payment shall have been made in full, or funds necessary for such payment shall have been set aside by the Corporation in trust for the account of the holders of Series D Preferred Stock, so as to be available for such payment, such holders of Series D Preferred Stock shall be entitled to no further participation in the distribution of the assets of the Corporation.

**6.4.4.2 Consolidation, Merger and Other Corporate Events.** A Transfer of Control or a sale, lease, mortgage, pledge, exchange, transfer or other disposition of all or substantially all of the assets of the Corporation or any reclassification of the stock of the Corporation (other than a change in par value per share or from no par value per share to par value per share, or from par value per share to no par value per share or as the result of an event described in Section 6.4.6 of these Restated Articles), shall be regarded as a Liquidation Event within the meaning of this Section 6.4.4. In no event shall the issuance of new classes of stock, whether senior, junior or on a parity with the Series D Preferred Stock, be deemed a "reclassification" under or otherwise limited by the terms hereof.

**6.4.4.3 Distribution of Cash and Other Assets.** In the event of a Liquidation Event of the Corporation resulting in the availability of assets other than cash for distribution to the holders of the Series D Preferred Stock, the holders of outstanding shares of the Series D Preferred Stock shall be entitled to a distribution of cash and/or assets equal to the Series D Stated Value, which valuation shall be made solely by the Board of Directors, and, provided that such Board of Directors was acting in good faith, shall be conclusive; provided, further, that, if such other assets to be distributed to shareholders in connection with a Liquidation Event are securities, the same shall be valued as follows:

(a) The method of valuation of securities not subject to investment representation letter or other similar restrictions on free marketability shall be as follows:

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(i) unless otherwise specified in a definitive agreement for the acquisition of the Corporation, if the securities to be distributed are shares of Common Stock of the Corporation or other securities that are traded on a National Securities Exchange, the same shall be determined based on its then Fair Market Value; and

(ii) if there is no public market as described in clause (i) above, then 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 investment letter or other restrictions on free marketability shall be to make a thirty percent (30%) discount from the Fair Market Value to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

6.4.4.4 Distribution to Junior Security Holders. After the payment or distribution to the holders of the Series D Preferred Stock of the full preferential amounts aforesaid, the holders of the Common Stock then outstanding, or any other stock of the Corporation ranking as to assets upon the occurrence of a Liquidation Event of the Corporation junior to the Series D Preferred Stock, shall be entitled to receive ratably all of the remaining assets of the Corporation.

6.4.4.5 Preference: Priority. References to a stock that is "senior" to, on a "parity" with or "junior" to other stock as to the occurrence of a Liquidation Event shall refer, respectively, to rights of priority of one series or class of stock over another in the distribution of assets on the occurrence of a Liquidation Event of the Corporation. The Series D Preferred Stock shall be senior to the Common Stock of the Corporation, senior to any subsequent series of Preferred Stock issued by the Corporation, junior to the Corporation's outstanding Series C Preferred Stock and pari passu with the Corporation's outstanding Series A Preferred Stock and any shares of Series B Preferred Stock issued subsequent to the date hereof.

6.4.5 Voting Rights. Except as otherwise required by law, the holder of shares of Series D Preferred Stock shall not have the right to vote on matters that come before the shareholders.

6.4.6 Conversion Rights. The holders of Series D Preferred Stock will have the following conversion rights:

6.4.6.1 Right to Convert. Subject to and in compliance with the provisions of this Section 6.4.6, any issued and outstanding shares of Series D Preferred Stock may, at the option of the holder, be converted at any time or from time to time into fully paid and nonassessable shares of Common Stock at the conversion rate in effect at the time of conversion, determined as provided herein; provided, that a holder of Series D Preferred Stock may at any given time convert only up to that number of shares of Series

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D Preferred Stock so that, upon conversion, the aggregate beneficial ownership of the Corporation's Common Stock (calculated pursuant to Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of such holder and all persons affiliated with such holder is not more than 9.99% of the Corporation's Common Stock then outstanding.

**6.4.6.2 Mechanics of Conversion.** Before any holder of Series D Preferred Stock shall 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 the Common Stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the number of shares of Series D Preferred Stock being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder of Series D Preferred Stock a certificate or certificates for the number of shares of Common Stock to which he shall be entitled. 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 D 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.

**6.4.6.3 Series D Conversion Price.** The number of shares of Common Stock into which one share of Series D Preferred Stock shall be convertible shall be determined by dividing the Series D Stated Value by \$0.10, subject to adjustment as set forth below in this Section 6.4.6.3 (the "Series D Conversion Price").

(a) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time, or from time to time after the date shares of the Series D Preferred Stock are first issued (the "Original Series D Issue Date"), effect a subdivision of the outstanding Common Stock, the Series D Conversion Price in effect immediately prior thereto shall be proportionately decreased and, conversely, if the Corporation shall at any time or from time to time after the Original Series D Issue Date combine the outstanding shares of Common Stock, the Series D Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 6.4.6.3(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the Original Series D Issue Date, shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Series D Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series D Conversion Price then in effect by a fraction:

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(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series D Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter, the Series D Conversion Price shall be adjusted pursuant to this Section 6.4.6.3(b) as of the time of actual payment of such dividends or distributions.

(c) Adjustments for Other Dividends and Distributions.

In the event the Corporation at any time or from time to time after the Original Series D Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of such Series D Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had their Series D Preferred Stock been converted into Common Stock on the date of such event and had thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period giving application to all adjustments called for during such period under this paragraph (c) with respect to the rights of the holders of the Series D Preferred Stock.

(d) Adjustments to Series D Conversion Price for Certain

Diluting Issues.

(A) Special Definitions. For purposes of this paragraph (f)(vii), the following definitions apply:

(i) "Options" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (defined below).

(ii) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock and Series D Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(iii) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 6.4.6.3(d)(iii)(C), deemed to be issued) by the Corporation after the

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Original Series D Issue Date; provided, that "Additional Shares of Common Stock" shall *not* mean or include any shares of Common Stock issued or issuable:

1. upon conversion of shares of Series D Preferred Stock;

2. to officers, directors or employees of, or consultants to, the Corporation pursuant to stock option or stock purchase plans or agreements on terms approved by the Board of Directors, but not exceeding, at any one time, more than five (5%) percent of the fully-diluted shares of Common Stock then issued and outstanding (net of any repurchases of such shares), subject to adjustment for all subdivisions and combinations;

3. in connection with any acquisition, joint venture or similar combination, as full or partial consideration for the assets, securities or properties of any other person, firm or corporation, whether by purchase, exchange, merger, consolidation or like combination;

4. as a dividend or distribution on Series D Preferred Stock; or

5. for which adjustment of the Series D Conversion Price is made pursuant to other clauses, sections or subsections of this Section 6.4.6.3(a),(b), (c) or (d).

**(B) No Adjustment of Series D Conversion Price.**

Any provision herein to the contrary notwithstanding, no adjustment in the Series D Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 6.4.6.3(d)(E) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series D Conversion Price in effect on the date of, and immediately prior to such issue.

**(C) Deemed Issuance of Additional Shares of**

**Common Stock.** In the event the Corporation at any time or from time to time after the Original Series D Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto

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without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(i) no further adjustments in the Series D Conversion Price shall be made upon the subsequent issuance of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series D Conversion Price shall affect Common Stock previously issued upon conversion of the Series D Preferred Stock);

(iii) Upon the expiration of any such Options or rights, the termination of any such rights to convert or exchange, or the expiration of any rights related to such Convertible Securities, the Series D Conversion Price, to the extent in any way affected by or computed using such Options or Convertible Securities (unless such Options or Convertible Securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of Section 6.4.6.3(d)(D)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Convertible Securities that remain in effect) actually issued upon the exercise of such Options or rights related to such Convertible Securities.

(iv) no readjustment pursuant to clause (ii) or (iii) above shall have the effect of increasing the Series D Conversion Price to an amount which exceeds the lower of (a) the Series D Conversion Price on the original adjustment date, or (b) the Series D Conversion Price that would have resulted from any issuance of



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Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation, at any time after the Original Series D Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 6.4.6.3(d)(C)) without consideration or for a consideration per share less than the Series D Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the Series D Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Series D Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Series D Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stocks outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Series D Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

(E) Determination of Consideration. For purposes of this Section 6.4.6.3(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) Cash and Property: Such consideration shall:

1. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

2. insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

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3. in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors, but in no event less than the value of such Common Stock or other securities provided for in Sections 6.22.3(a) and (b) of these Restated Articles.

(ii) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 6.4.6.3(d)(C), relating to Options and Convertible Securities shall be determined by dividing

1. the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

2. the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(e) Adjustment for Reclassification, Exchange or Substitution. If the Common Stock issuable upon the conversion of the Series D Preferred Stock shall be changed into the same or a different number of shares of any

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class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 6.4.6.3), then and in each such event the holder of each share of Series D Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the number of shares of Common Stock into which such shares of Series D Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(f) Reorganization, Mergers, Consolidations or Sales of Assets. If at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 6.4.6 or a merger or consolidation of the Corporation with or into another corporation, or the sale of all or substantially all of the Corporation's properties and assets to any other person, then, as a part of such reorganization, merger, consolidation or sale, provision shall be made so that the holders of the Series D Preferred Stock shall thereafter be entitled to receive upon conversion of such Series D Preferred Stock, the number of shares of stock or other securities or property of the Corporation or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger, consolidation or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 6.4.6.3(d)(E)(ii) with respect to the rights of the holders of the Series D Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this paragraph (f) (including adjustment of the Series D Conversion Price then in effect and the number of shares purchasable upon conversion of the Series D Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price or the securities issuable upon conversion of the Series D Preferred Stock, the Corporation shall compute such adjustment or readjustment in accordance herewith and the Corporation's Chief Financial Officer shall prepare and sign a certificate showing such adjustment or readjustment, and shall mail such certificate by first class mail, postage prepaid, to each registered holder of the Series D Preferred Stock at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based.

(h) Notices of Record Date. In the event of (A) any taking by the Corporation of a record of the holders of any class or series of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or (B) any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation or any transfer of all or

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substantially all of the assets of the Corporation to any other corporation, entity or person, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series D Preferred Stock at least 10 days prior to the record date specified therein, a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such reclassification, recapitalization, merger, consolidation, transfer, dissolution, liquidation or winding up is expected to become effective and (3) the time, if any is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares, of Common Stock (or other securities) for securities or other property deliverable upon such reclassification, recapitalization, merger, consolidation, transfer, dissolution, liquidation or winding up.

(j) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series D Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of the Corporation's Common Stock on the date of conversion, as determined in good faith by the Board of Directors.

(j) 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 D 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 D 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 D 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.

(k) Notices. Any notice required by the provisions of this paragraph (k) to be given to the holders of shares of Series D Preferred Stock shall be deemed given (A) if deposited in the United States mail, postage prepaid, or (B) if given by any other reliable or generally accepted means (including by facsimile or by a nationally recognized overnight courier service), in each case addressed to each holder of record at his address (or facsimile number) appearing on the books of the Corporation.

(l) Payment of Taxes. The Corporation will pay all transfer taxes and other governmental charges that may be imposed in respect of the issuance or delivery of shares of Common Stock upon conversion of shares of Series D Preferred Stock.

6.4.6.4 No Dilution or Impairment. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issuance or sale of securities or any other voluntary

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action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, without the approval of a majority of the then outstanding Series D Preferred Stock.

**6.4.6.5 No Reissuance of Preferred Stock.** Any shares of Series D Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be canceled, retired and eliminated from the shares of Series D Preferred Stock that the Corporation shall be authorized to issue. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth in the Articles of Incorporation or in any certificate of designation creating a series of Preferred Stock or any similar stock or as otherwise required by law.

**6.4.6.6 Severability.** If any right, preference or limitation of the Series D Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule, law or public policy, all other rights, preferences and limitations set forth herein that can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall nevertheless remain in full force and effect, and no right, preference or limitation herein shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

#### **6.5 Series E Preferred Stock.**

**6.5.1 Designation and Stated Value.** The Board of Directors of the Corporation, pursuant to the authority granted in Section 5.2 of Article V hereof, has hereby created a new series of Preferred Stock, designated as "Series E Preferred Stock." The Stated Value of the Series E Preferred Stock shall be one hundred dollars (\$100.00) per share (the "Series E Stated Value").

**6.5.2 Number.** The number of shares constituting the Series E Preferred Stock shall be twenty seven thousand five hundred (27,500) shares of such series.

**6.5.3 Dividend Rights.** Until such date (the "Effective Date") as a registration statement covering the Common Stock issuable upon conversion of the Series E Preferred Stock, certain additional shares of Common Stock purchased on the Issue Date from an affiliate of the Corporation, and other shares of Common Stock issuable upon exercise of certain warrants issued on the Issue date to the Holder of the Series E Preferred Stock (collectively, the "Registrable Securities"), on Form S-1 or other applicable form for registering securities under the Securities Act of 1933, as amended (the "Registration Statement") shall have been declared effective by the Securities and Exchange Commission, each Share of Series E Preferred Stock shall pay a mandatory monthly dividend, at an annual rate equal to the product of multiplying (i) the \$100.00 per share Series E Purchase Price, by (ii) 5.0%. Such dividend shall be payable monthly in arrears in cash. . From and after the Effective Date of the Registration Statement, no further mandatory dividends shall be payable on the Series E Preferred Stock. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior

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rights as to dividends, the holder of the Series E Preferred 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.

#### 6.5.4 Liquidation Preference.

##### 6.5.4.1 Preference upon Liquidation, Dissolution or Winding Up.

In the event of any dissolution or winding up of the Corporation, whether voluntary or involuntary, holders of each outstanding share of Series E Preferred Stock shall be entitled to be paid first out of the assets of the Corporation available for distribution to shareholders, whether such assets are capital, surplus or earnings, an amount equal to \$100.00 (the "Series E Purchase Price") per share of Series E Preferred Stock held (as adjusted for any stock splits, stock dividends or recapitalizations of the Series E Preferred Stock) and any declared but unpaid dividends on such share, (A) after all payments shall be made to the holders of any outstanding shares of Series C Preferred Stock, (B) *pari passu* and contemporaneous with any payments that are required to be made to the holders of any outstanding shares of (x) Series A Preferred Stock, (y) Series B Preferred Stock, and (z) Series D Preferred Stock, and (C) before any payment shall be made to the holders of the Common Stock, or any other stock of the Corporation ranking junior to the Series E Preferred Stock with regard to any distribution of assets upon liquidation, dissolution or winding up of the Corporation in accordance with these Restated Articles. The holders of the Series E Preferred Stock shall be entitled to share ratably, in accordance with the respective preferential amounts payable on such stock, in any distribution which is not sufficient to pay in full the aggregate of the amounts payable thereon. If, upon any liquidation, dissolution or winding up of the Corporation, after priority payments made in respect of the Series C Preferred Stock and partial *pari passu* payments made in respect of the Series A Preferred Stock, Series B Preferred Stock and/or Series D Preferred Stock, the remaining assets to be distributed to the holders of the Series E Preferred Stock shall be insufficient to permit payment to such holders of the Series E Preferred Stock of the full preferential amounts aforesaid, then all of the remaining assets of the Corporation available for distribution to shareholders shall be distributed to the holders of outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, on a pro-rata basis. Each holder of the Series E Preferred Stock shall be entitled to receive that portion of the assets available for distribution as the number of outstanding shares of Series E Preferred Stock held by such holder bears to the total number of shares of Series E Preferred Stock. Such payment shall constitute payment in full to the holders of the Series E Preferred Stock upon the liquidation, dissolution or winding up of the Corporation. After such payment shall have been made in full, or funds necessary for such payment shall have been set aside by the Corporation in trust for the account of the holders of Series E Preferred Stock, so as to be available for such payment, such holders of Series E Preferred Stock shall be entitled to no further participation in the distribution of the assets of the Corporation.

6.5.4.2 Consolidation, Merger and Other Corporate Events. A consolidation or merger of the Corporation (except into or with a subsidiary corporation

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or a corporation otherwise Affiliated with The Molina Vector Investment Trust or any other affiliate of Dr. Luis Enrique Molina Galeana) or a sale, lease, mortgage, pledge, exchange, transfer or other disposition of all or substantially all of the assets of the Corporation or any reclassification of the stock of the Corporation (other than a change in par value or from no par to par, or from par to no par or as the result of an event described in Section 6.5.6 of these Restated Articles), shall be regarded as a Liquidation Event within the meaning of this Section 6.5.4. In no event shall the issuance of new classes of stock, whether senior, junior or on a parity with the Series E Preferred Stock, be deemed a "reclassification" under or otherwise limited by the terms hereof.

**6.5.4.3 Distribution of Cash and Other Assets.** In the event of a Liquidation Event resulting in the availability of assets other than cash for distribution to the holders of the Series E Preferred Stock, the holders of the Series E Preferred Stock shall be entitled to a distribution of cash and/or assets equal to the Series E Stated Value, which valuation shall be made solely by the Board of Directors, and provided that such Board of Directors was acting in good faith, shall be conclusive; provided, further, that, if such other assets to be distributed to shareholders in connection with a Liquidation Event are securities, the same shall be valued as follows:

(a) The method of valuation of securities not subject to investment representation letter or other similar restrictions on free marketability shall be as follows:

(i) unless otherwise specified in a definitive agreement for the acquisition of the Corporation, if the securities to be distributed are shares of Common Stock of the Corporation or other securities that are traded on a Principal Securities Exchange, the same shall be determined based on its then Fair Market Value; and

(ii) if there is no public market as described in clause (i) above, then 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 investment letter or other restrictions on free marketability shall be to make a thirty percent (30%) discount from the Fair Market Value to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

**6.5.4.4 Distribution to Junior Security Holders.** After the payment or distribution to the holders of the Series E Preferred Stock of the full preferential amounts aforesaid, the holders of the Common Stock then outstanding, or any other stock of the Corporation ranking as to assets upon the occurrence of a Liquidation Event of the Corporation junior to the Series E Preferred Stock, shall be entitled to receive ratably all of the remaining assets of the Corporation.

**6.5.4.5 Preference; Priority.** References to a stock that is "senior" to, on a "parity" with or "junior" to other stock as to the occurrence of a Liquidation

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Event shall refer, respectively, to rights of priority of one series or class of stock over another in the distribution of assets on the occurrence of a Liquidation Event of the Corporation. The Series E Preferred Stock shall be senior to the Common Stock of the Corporation, senior to any subsequent series of Preferred Stock issued by the Corporation, junior to the Corporation's outstanding Series C Preferred Stock and pari passu with the Corporation's outstanding Series A Preferred Stock, Series D Preferred Stock and any shares of Series B Preferred Stock issued subsequent to the date hereof.

6.5.5 Voting Rights. Except as otherwise required by law, the holder of shares of Series E Preferred Stock shall not have the right to vote on matters that come before the shareholders.

6.5.6 Conversion Rights. The holders of Series E Preferred Stock will have the following conversion rights:

6.5.6.1 Right to Convert. Subject to and in compliance with the provisions of this Section 6.5.6, any issued and outstanding shares of Series E Preferred Stock may, at the option of the holder, be converted at any time or from time to time into fully paid and nonassessable shares of Common Stock at the conversion rate in effect at the time of conversion, determined as provided herein; provided, that a holder of Series E Preferred Stock may at any given time convert only up to that number of shares of Series E Preferred Stock so that, upon conversion, the aggregate beneficial ownership of the Corporation's Common Stock (calculated pursuant to Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of such holder and all persons affiliated with such holder is not more than 9.99% of the Corporation's Common Stock then outstanding.

6.5.6.2 Mechanics of Conversion. Before any holder of Series E Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender and deliver the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Common Stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the number of shares of Series E Preferred Stock being converted (the "Conversion Notice"). Such Conversion Notice shall be delivered either simultaneous with, or not earlier than three (3) Business Days prior to, deliver of the certificate or certificates for conversion, as aforesaid. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder of Series E Preferred Stock a certificate or certificates for the number of shares of Common Stock to which he shall be entitled. Each conversion of Series E Preferred Stock into shares of Common Stock shall be deemed to have been made immediately prior to the close of business on the date of such surrender and delivery of the shares of Series E Preferred Stock to be converted (each, a "Conversion Date"), 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 Conversion Date.

6.5.6.3 Series E Conversion Price. The number of shares of Common Stock into which one share of Series E Preferred Stock shall be convertible



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shall be determined by dividing the \$100.00 per share Series E Purchase Price by \$0.05 (the "Series E Conversion Price").

The foregoing Conversion Price shall be subject to adjustment as set forth below in this Section 6.5.6.3.

If an Event of Default occurs, (i) Adjustment upon Occurrence of an Event of Default. If the Preferred Stock, the Conversion Price shall be reduced to ninety percent (90%) of the Conversion Price then in effect, provided, however, in no event shall the Conversion Price be less than the Floor Price.

(ii) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time, or from time to time after the Series E Issue Date, effect a subdivision of the outstanding Common Stock, the Conversion Price in effect immediately prior thereto shall be proportionately decreased, and conversely, if the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph (ii) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(iii) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the Original Issue Date, shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(A) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(B) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter, the Conversion Price shall be adjusted pursuant to this paragraph (D)(v) as of the time of actual payment of such dividends or distributions.

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(iv) Adjustments for Other Dividends and Distributions.

In the event the Corporation at any time or from time to time after the Series E Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of such Series E Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had their Series E Preferred Stock been converted into Common Stock on the date of such event and had thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period giving application to all adjustments called for during such period under this paragraph (f) with respect to the rights of the holders of the Series E Preferred Stock.

(v) Adjustments to Conversion Price for Certain Diluting

Issues.

(A) Special Definitions. For purposes of this

paragraph (v), the following definitions apply:

(i) "Options" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (defined below).

(ii) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock and Series E Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(iii) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to paragraph (v)(C), deemed to be issued) by the Corporation after the Series E Issue Date; provided, that "Additional Shares of Common Stock" shall *not* mean or include any shares of Common Stock issued or issuable:

1. upon conversion of shares of Series E Preferred Stock;

2. to officers, directors or employees of, or consultants to, the Corporation pursuant to stock option or stock purchase plans or agreements on terms approved by the Board of Directors, but not exceeding, at any one time, more than five (5%) percent of the fully-diluted shares of Common Stock then issued and outstanding (net of any repurchases of such shares), subject to adjustment for all subdivisions and combinations;

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3. in connection with any acquisition, joint venture or similar combination, as full or partial consideration for the assets, securities or properties of any other person, firm or corporation, whether by purchase, exchange, merger, consolidation or like combination;

4. as a dividend or distribution on Series E Preferred Stock; or

5. for which adjustment of the Conversion Price is made pursuant to any other provisions of this Section 6.5.6.3.

(B) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to paragraph (v)(E) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue.

(C) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Series E Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(i) no further adjustments in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and

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any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Conversion Price shall effect Common Stock previously issued upon conversion of the Series E Preferred Stock);

(iii) Upon the expiration of any such Options or rights, the termination of any such rights to convert or exchange, or the expiration of any rights related to such Convertible Securities, the Conversion Price, to the extent in any way affected by or computed using such Options or Convertible Securities (unless such Options or Convertible Securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of (f)(vii)(D)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Convertible Securities that remain in effect) actually issued upon the exercise of such Options or rights related to such Convertible Securities.

(iv) no readjustment pursuant to clause (ii) or (iii) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (a) the Conversion Price on the original adjustment date, or (b) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation, at any time after the Series E Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to paragraph (v)(C)) without consideration or for a consideration per share less than the Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Series E Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock and any outstanding warrants, options or other

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rights for the purchase of shares of stock or convertible securities had been fully exercised (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

(E) Determination of Consideration. For purposes of this paragraph (v), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) Cash and Property: Such consideration shall:

1. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

2. insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

3. in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors.

(ii) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to paragraph (f)(vii), relating to Options and Convertible Securities shall be determined by dividing

1. the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the

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exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

2. the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(e) Adjustment for Reclassification Exchange or Substitution. If the Common Stock issuable upon the conversion of the Series E Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 6.5.6.3), then and in each such event the holder of each share of Series E Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the number of shares of Common Stock into which such shares of Series E Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(f) Reorganization, Mergers, Consolidations or Sales of Assets. If at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 6.5.6) or a merger or consolidation of the Corporation with or into another corporation, or the sale of all or substantially all of the Corporation's properties and assets to any other person, then, as a part of such reorganization, merger, consolidation or sale, provision shall be made so that the holders of the Series E Preferred Stock shall thereafter be entitled to receive upon conversion of such Series E Preferred Stock, the number of shares of stock or other securities or property of the Corporation or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger, consolidation or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 6.5.6.3 with respect to the rights of the holders of the Series E Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section 6.5.6.3 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series E Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price or the securities issuable upon conversion of the

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Series E Preferred Stock, the Corporation shall compute such adjustment or readjustment in accordance herewith and the Corporation's Chief Financial Officer shall prepare and sign a certificate showing such adjustment or readjustment, and shall mail such certificate by first class mail, postage prepaid, to each registered holder of the Series E Preferred Stock at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based.

(h) Notices of Record Date. In the event of (A) any taking by the Corporation of a record of the holders of any class or series of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or (B) any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation or any transfer of all or substantially all of the assets of the Corporation to any other corporation, entity or person, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series E Preferred Stock at least 10 days prior to the record date specified therein, a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective and (3) the time, if any is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares, of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

(i) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series E Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of the Corporation's Common Stock on the date of conversion, as determined in good faith by the Board of Directors.

(j) 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 E 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 E 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 E 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.

(k) Notices. Any notice required by the provisions of this paragraph (k) to be given to the holders of shares of Series E Preferred Stock shall be deemed given (A) if deposited in the United States mail, postage prepaid, or (B) if given

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by any other reliable or generally accepted means (including by facsimile or by a nationally recognized overnight courier service), in each case addressed to each holder of record at his address (or facsimile number) appearing on the books of the Corporation.

(1) Payment of Taxes. The Corporation will pay all transfer taxes and other governmental charges that may be imposed in respect of the issue or delivery of shares of Common Stock upon conversion of shares of Series B Preferred Stock.

6.5.6.4 No Dilution or Impairment. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, without the approval of a majority of the then outstanding Series B Preferred Stock.

6.5.6.5 No Reissuance of Preferred Stock. Any shares of Series B Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be canceled, retired and eliminated from the shares of Series B Preferred Stock that the Corporation shall be authorized to issue. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth in the Articles of Incorporation or in any certificate of Determination creating a series of Preferred Stock or any similar stock or as otherwise required by law.

6.5.6.6 Severability. If any right, preference or limitation of the Series B Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule, law or public policy, all other rights, preferences and limitations set forth herein that can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall nevertheless remain in full force and effect, and no right, preference or limitation herein shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

## 6.6 Common Stock

6.6.1 Voting Rights. Each holder of shares of Common Stock shall be entitled to one (1) vote for each such share of Common Stock owned of record by such Person. Except as may be provided by the resolutions of the Board of Directors authorizing the issuance of any class or series of Preferred Stock, cumulative voting by any shareholder is hereby expressly denied.

6.6.2 Quorum. The record owners of a majority of the outstanding shares of Common Stock present in person or by proxy at any regular or special meeting of shareholders shall be required to constitute a quorum of the holders of such Common Stock at such meeting.



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**6.6.3 Required Vote and Stockholder Action.** The affirmative vote, consent or approval of record holders of a majority of the issued and outstanding shares of Common Stock of the Corporation present in person or by proxy at any regular or special meeting at which a quorum is present, shall be required to constitute the actions of the holders of Common Stock of the Corporation. To the fullest extent permitted by the FBCA, and subject only to the other rights of holders of Preferred Stock as provided in these Restated Articles, action by the holders of Common Stock of the Corporation on any matter may be validly taken without a meeting of stockholders if such action shall have been approved or ratified by the written consent of the then holders of a majority of all of the issued and outstanding shares of Common Stock of the Corporation.

## ARTICLE VII

### BOARD OF DIRECTORS

**7.1 Election.** The Board of Directors shall consist of not less than three directors and not more than seven directors. The exact number of members of the entire Board of Directors shall be fixed from time to time by the affirmative vote of a majority of directors then in office or by the affirmative vote of the holders of a majority of the shares of capital stock entitled to vote on the matter. Subject at all times to the rights of the holders of the Class C Preferred Stock, as hereinabove provided in these Restated Articles, whenever any vacancy on the Board of Directors shall occur for any reason, a majority of directors then in office, although less than a quorum of the entire Board of Directors, or the holders of a majority of the shares entitled to vote on the matter, may fill the vacancy or vacancies for the balance of the unexpired term or terms, at which time a successor or successors shall be duly elected by the shareholders and qualified.

**7.2 Repeal or Amendment of Article VII.** This Article VII may not be repealed or amended in any respect, and no provision inconsistent with this Article VII may be adopted, unless such action is approved by the affirmative vote of the holders of not less than sixty-five percent (65%) of the combined voting power of the then outstanding shares of capital stock of the Corporation, voting separately with respect to the Series C Preferred Stock and as a single class with respect to the Common Stock, entitled to vote generally in the election of directors.

## ARTICLE VIII

### SPECIAL MEETINGS OF SHAREHOLDERS

Except as otherwise required by law, the Corporation shall not be required to hold a special meeting of shareholders of the Corporation unless, in addition to any other requirements of law, (i) the holders of not less than thirty percent (30%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the Corporation's secretary one or more written demands for the

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meeting describing the purpose or purposes for which it is to be held or (ii) the meeting is called by the Board of Directors pursuant to a resolution approved by a majority of the entire Board of Directors or by the Corporation's Chairman. Only business within the purpose or purposes described in the special meeting notice required by the FBCA may be conducted at a special shareholders' meeting.

## ARTICLE IX

### BUSINESS COMBINATIONS

9.1 Shareholder Approval. In addition to any affirmative vote required by law or the Restated Articles, the affirmative vote of the holders of not less than sixty-five percent (65%) of the outstanding shares of "VOTING STOCK" (as hereinafter defined) of the corporation shall be required for the approval or authorization of any "BUSINESS COMBINATION" (as hereinafter defined) or of any series of transactions which, if taken together, would constitute a Business Combination of the Corporation or any Subsidiary (as defined in Section 6.1.14 above) with any "RELATED PERSON" (as hereinafter defined); provided, however, that the sixty-five percent (65%) voting requirement shall not be applicable if:

9.1.1 The "CONTINUING DIRECTORS" of the corporation (as hereinafter defined) by a majority vote (i) have expressly approved in advance the acquisition of voting Stock of the Corporation that caused the Related Person to become a Related Person, or (ii) have approved the Business Combination; or

9.1.2 The Business Combination is a merger or consolidation and the cash or fair market value of the property, securities or other consideration to be received per share by holders of Common Stock of the Corporation in the Business Combination is not less than the highest per share price (with appropriate adjustments for recapitalizations and for stock splits, stock dividends and like distributions) paid by the Related Person in acquiring any of its holdings of the Corporation's Common Stock either in or subsequent to the transaction or series of transactions in which the Related Person became a Related Person.

Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

### 9.2 Definitions. For the purposes of this Article IX:

9.2.1 The term "BUSINESS COMBINATION" shall mean (i) any merger or consolidation of the Corporation or a Subsidiary with or into a Related Person, (ii) any sale, lease, exchange, transfer or other disposition, including without limitation a mortgage or any other security device, of all or any "SUBSTANTIAL PART" (as

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hereinafter defined) of the assets either of the Corporation (including without limitation any voting securities of a subsidiary) or of a Subsidiary, to a Related Person, (iii) any merger or consolidation of a Related Person with or into the Corporation or a Subsidiary of the Corporation, (iv) any sale, lease, exchange, transfer or other disposition of all or any Substantial Part of the assets of a Related Person to the Corporation or a Subsidiary of the Corporation, (v) the issuance or transfer of any securities of the Corporation or a Subsidiary of the Corporation to a Related Person, (vi) any reclassification of securities (including a reverse stock split) or recapitalization that would have the effect of increasing the voting power of a Related Person, and (vii) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of any Related Person.

9.2.2 The term "RELATED PERSON" shall mean and include any individual, corporation, partnership or other person or entity which, together with its "AFFILIATES" and "ASSOCIATES" (as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended), "BENEFICIALLY OWNS" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, as amended) in the aggregate fifteen percent (15%) or more of the outstanding Voting Stock of the Corporation, any Affiliate or Associate of any such individual, corporation, partnership or other person or entity, and any assignee of any of the foregoing. The term "RELATED PERSON" shall not include Robert C. Guccione, the Robert C. Guccione Family Trust No. 1, GMI of GM.

9.2.3 The term "SUBSTANTIAL PART" shall mean more than thirty percent (30%) of the fair market value of the total assets of the Corporation in question, as of the end of its most recent fiscal year ending prior to the time the determination is being made.

9.2.4 Without limitation, any shares of voting Stock of the corporation that any Related Person has the right to acquire pursuant to any agreement, or upon exercise of conversion, rights, warrants or options, or otherwise, shall be deemed beneficially owned by the Related Person.

9.2.5 For the purposes of Section 9.1.2 of this Article IX, the term "OTHER CONSIDERATION TO BE RECEIVED" shall include, without limitation, Common Stock of the Corporation retained by its existing stockholders in the event of a Business Combination in which the Corporation is the surviving corporation.

9.2.6 The term "VOTING STOCK" shall mean all outstanding shares of capital stock of the corporation or another corporation entitled to vote generally in the election of directors and each reference to a proportion of shares of Voting Stock shall refer to such proportion of the votes entitled to be cast by such shares.

9.2.7 The term "CONTINUING DIRECTOR" shall mean a director who either (i) was a member of the Board of Directors of the corporation immediately prior to the time that the Related Person involved in a Business Combination became a Related

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Person or (ii) was designated (before his or her initial election as director) as a Continuing Director by a majority of the then Continuing Directors.

9.3 Repeal or Amendment. This Article IX may not be repealed or amended in any respect, and no provision inconsistent with this Article IX may be adopted, unless such action is approved by the affirmative vote of the holders of not less than sixty-five percent (65%) of the outstanding shares of Voting Stock of the corporation.

#### ARTICLE X

##### NO PRE-EMPTIVE RIGHTS

No shareholder of the Corporation shall have, by reason of holding shares of any class or series of stock of the Corporation, any preemptive or preferential rights to purchase or subscribe for any other shares of any class or series of the Corporation now or hereafter authorized, any other equity securities of the corporation or any notes, debentures, warrants, bonds or other securities convertible into, or carrying options or warrants to purchase shares of, any class stock of the Corporation, now or hereafter authorized, whether or not the issuances of any such shares, or such notes, debentures, bonds or other securities, would adversely affect the dividend or voting rights of such shareholder.

#### ARTICLE XI

##### WAIVER OF INTERESTED SHAREHOLDER PROVISIONS OF FBCA

The Corporation expressly elects not to be governed by Section 607.0901 of the FBCA relating to affiliated transactions, as the same may be amended from time to time.

#### ARTICLE XII

##### BYLAWS

Unless otherwise provided by law, the Bylaws of the Corporation may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted, by the affirmative vote of a majority of the directors in office or the affirmative vote of holders of a majority of the shares entitled to vote on the matter.

#### ARTICLE XIII

##### LIABILITY AND INDEMNIFICATION OF OFFICERS AND DIRECTORS

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The Corporation shall indemnify, defend and hold harmless, and shall advance expenses on behalf of, its officers and directors to the fullest extent not prohibited by any law in existence either now or hereafter.

#### **ARTICLE XIV**

##### **REGISTERED OFFICE AND AGENT**

The street address of the Corporation's registered office shall be 1200 South Pine Island Road, Plantation, Florida 33324, and the registered agent for the Corporation at such address shall be CT Corporation System.

#### **ARTICLE XV**

##### **AMENDMENT**

Except as provided herein, the Restated Articles may be altered, amended or repealed by the shareholders of the Corporation in accordance with the applicable laws of the State of Florida.

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**EXHIBIT A**

**SEVENTH AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
PENTHOUSE INTERNATIONAL, INC**

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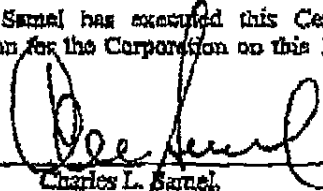
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**CERTIFICATE REGARDING  
SEVENTH AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
PENTHOUSE INTERNATIONAL, INC.**

Charles L. Sarnel, the Executive Vice-President of PENTHOUSE INTERNATIONAL, INC., a Florida corporation (the "Corporation"), does hereby certify as follows:

1. The Corporation's Seventh Amended and Restated Articles of Incorporation are attached hereto as Exhibit A and made a part hereof (the "Restated Articles").
2. All directors of the Corporation and all the holders of the outstanding shares of the Corporation's, Series A Preferred Stock and Series C Preferred Stock, as well as holders of a majority of the Corporation's common stock, have voted to adopt the Restated Articles through a Written Consent and Action of the Board of Directors and Stockholders Without a Meeting dated as of October 6, 2004.
3. There are no shares of the Corporation's Series B Preferred Stock outstanding at the present time.
4. The number of votes cast by the Corporation's directors, common stockholders and Preferred Shareholders for the adoption of the Restated Articles was sufficient for such adoption.

IN WITNESS WHEREOF, Charles Sarnel has executed this Certificate Regarding Amended and Restated Articles of Incorporation for the Corporation on this 13<sup>th</sup> day of October 2004.

  
\_\_\_\_\_  
Charles L. Sarnel,  
Executive Vice-President  
Penthouse International, Inc.

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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FILED