

To: FL Dept. of State
Subject: 00015052587

From: Katie Wensch

Friday, May 26, 2006 2:21 PM Page: 1 of 14

903000067188

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H06000144617 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations
Fax Number : (850)205-0380

From:
Account Name : CORPDIRECT AGENTS, INC.
Account Number : 110450000714
Phone : (850)222-1173
Fax Number : (850)224-1640

FILED
06 MAY 26 AM 10:58
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECEIVED

06 MAY 26 AM 8:00

DIVISION OF CORPORATIONS

COR AMND/RESTATE/CORRECT OR O/D RESIGN

UNDER THE CANOPY, INC.

Certificate of Status	0
Certified Copy	1
Page Count	14
Estimated Charge	\$43.75

Electronic Filing Menu

Corporate Filing Menu

Help

cur
Amnd
& Cert Copy
5-26-06

H060001446173

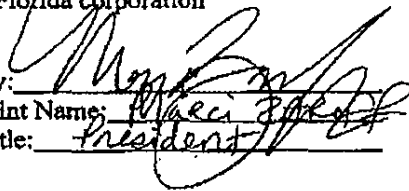
**ARTICLES OF AMENDMENT
TO
AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
UNDER THE CANOPY, INC.**

Pursuant to the provisions of Section 607.1006 of the Florida Business Corporation Act (the "Act"), the undersigned corporation adopts the following Articles of Amendment to its Amended and Restated Articles of Incorporation:

1. The name of the Corporation is Under the Canopy, Inc. (the "Corporation"), Document #P03000067188, filed June 17, 2003.
2. The following Amendment to the Amended and Restated Articles of Incorporation was adopted by all of the Directors of the Corporation and the Shareholders of the Corporation, the number of votes cast being sufficient for approval, on May 25, 2006 in the manner prescribed by Section 607.1003 of the Act.
3. Article IV of the Corporation's Amended and Restated Articles of Incorporation is hereby deleted, and replaced by a new Article IV in the form attached to these Articles of Amendment as Exhibit A.
4. Except as hereby amended, the Amended and Restated Articles of Incorporation of the Corporation shall remain the same.
5. The effective date of this amendment shall be upon the filing of these Articles of Amendment.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment to Amended and Restated Articles of Incorporation of Under the Canopy, Inc. as of this 25 day of May, 2006.

UNDER THE CANOPY, INC.,
a Florida corporation

By: 
Print Name: Marcia E. [unclear]
Title: President

H06000144617 3

FILED
06 MAY 26 AM 10:58
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

H06000144617 3

CLERK OF STATE
TALLAHASSEE, FLORIDA

MAY 26 AM 10:58

FILED

EXHIBIT A TO ARTICLES OF AMENDMENT

The following is the complete text of Article IV of the Corporation's Amended and Restated Articles of Incorporation, as amended:

ARTICLE IV

1. Capital Stock

The aggregate number, class and par value of shares which the Corporation is authorized to issue is Two Hundred Million (200,000,000) shares, consisting of:

(A) One Hundred Fifty Million (150,000,000) shares of common stock with a par value of \$0.0001 per share (the "Common Stock"); and

(B) Fifty Million (50,000,000) shares of preferred stock with a par value of \$0.0001 per share (the "Preferred Stock"), of which 30,000,000 shares have been designated as "Series A Convertible Preferred Stock." Article IV hereof contains a description of the Preferred Stock and a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof.

2. Common Stock

(A) General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of any issued and outstanding Preferred Stock.

(B) Voting Rights. Each holder of record of Common Stock shall be entitled to one vote for each share of Common Stock standing in such holder's name on the books of the Corporation. Except as otherwise required by law or these Amended and Restated Articles of Incorporation, the holders of Common Stock and the holders of Preferred Stock shall vote together as a single class on all matters submitted to shareholders for a vote (including any action by written consent).

(C) Dividends. Subject to provisions of law and Article IV of these Amended and Restated Articles of Incorporation, the holders of Common Stock shall be entitled to receive dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion.

(D) Liquidation. Subject to provisions of law and Article IV of these Amended and Restated Articles of Incorporation, upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after the payment or provisions for payment of all debts and liabilities of the Corporation and all preferential amounts to which the holders of the Preferred Stock are entitled with respect to the distribution of assets in liquidation, the holders of Common Stock shall be entitled to the remaining assets of the Corporation available for distribution.

H06000144617 3

3. Preferred Stock

(A) Authority of Board. The preferences and relative, participating or other rights of the Preferred Stock, and the qualifications, limitations or restrictions thereof are as follows:

(1) 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 and powers, preferences and rights, qualifications, limitations and restrictions thereof as are stated and expressed herein and in the resolution or resolutions providing for the issue of such class or series adopted by the Board of Directors as hereinafter prescribed.

(2) 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 from time to time adopted 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 preferences and relative, participating, optional or other special rights, if any, with respect to any class or series;

(c) 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;

(d) 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 be established, the annual amount thereof and the terms and provisions relative to the operation thereof;

(e) the dividend rate, 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 the 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;

(f) 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 of any other class or classes of stock of the Corporation and the conversion price or prices or 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 and expressed or provided for in such resolution or resolutions; and

H06000144617 3

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

The shares of each class or series of the Preferred Stock may vary from the shares of any other 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. The Board of Directors may decrease the number of shares of the Preferred Stock not designated for any other class or series. 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 Preferred Stock designated for such class or series, and the shares so subtracted shall become authorized, unissued and undesignated shares of Preferred Stock.

(B) Series A Preferred Stock.

(1) Designation and Amount. A total of 30,000,000 shares of the Corporation's Preferred Stock shall be designated as "Series A Convertible Preferred Stock" (hereinafter, the "Series A Preferred Stock").

(2) Voting Rights of Series A Preferred Stock. Except as otherwise expressly provided in Article IV, Section 3(B)(10) hereof or as otherwise required by law, each holder of Series A Preferred Stock shall be entitled to vote on all matters and shall be entitled to that number of votes equal to the number of whole shares of Common Stock into which such holder's respective shares of Series A Preferred Stock could then be converted, pursuant to the provisions of Article IV, Section 3(B)(3) hereof, at the record date for the determination of stockholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise expressly provided in Article IV, Section 3(B)(10) hereof or as otherwise required by law, the holders of shares of Series A Preferred Stock and Common Stock shall vote together as a single class on all matters.

(3) Conversion.

(a) General. Subject to and in compliance with the provisions of Article IV, Section 3(B)(3), any or all shares of Series A Preferred Stock may, at the option of the holder thereof, be converted at any time into fully-paid and non-assessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred Stock shall be entitled to receive upon conversion shall be the product obtained by dividing the number of shares of Series A Preferred Stock being converted by the Series A Conversion Value (determined as provided in Section 3(B)(3)(b)).

H06000144617 3

(b) Series A Conversion Value. The Series A Conversion Value in effect from time to time shall be \$0.11 (the "Original Issue Price") or such other amount to which the Series A Conversion Value is adjusted in accordance with this Section 3(B)(3)(b), (the "Series A Conversion Value"). The Series A Conversion Value shall be adjusted from time to time in accordance with the following:

(i) Effect on Conversion Value Upon Dilutive Issuances of Common Stock or Convertible Securities. If the Corporation shall, while there are any shares of Series A Preferred Stock outstanding, issue or sell shares of its Common Stock (or Common Stock Equivalents, as defined below) without consideration or at a price per share less than the Series A Conversion Value in effect immediately prior to such issuance or sale, then and in such event, the Series A Conversion Value upon each such issuance or sale, except as hereinafter provided, shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Series A Conversion Value as in effect immediately prior to such calculation, by a fraction, the numerator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock or Common Stock Equivalents (calculated on a fully diluted basis assuming the exercise or conversion of all then exercisable options, warrants, purchase rights or convertible securities), plus (B) the number of shares of Common Stock which the net aggregate consideration, if any, received by the Corporation for the total number of such additional shares of Common Stock or Common Stock Equivalents so issued would purchase at the Series A Conversion Value in effect immediately prior to such issuance, and the denominator of which shall be (x) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock or Common Stock Equivalents (calculated on a fully diluted basis assuming the exercise or conversion of all then exercisable options, warrants, purchase rights or convertible securities), plus (y) the number of such additional shares of Common Stock or Common Stock Equivalents so issued. The provisions of this Section 3(B)(3)(b)(i) may be waived in any instance (without the necessity of convening any meeting of shareholders of the Corporation) upon the written consent of the holders of at least 50% of the outstanding shares of Series A Preferred Stock.

(ii) Effect on Series A Conversion Value Upon Other Dilutive Issuances of Warrants, Options and Purchase Rights to Common Stock or Convertible Securities.

(A) For purposes of this Section 3(B)(3)(b), the issuance of any warrants, options, subscription or purchase rights with respect to shares of Common Stock and the issuance of any securities convertible into or exchangeable for shares of Common Stock, or the issuance of any warrants, options, subscription or purchase rights with respect to such convertible or exchangeable securities (collectively, "Common Stock Equivalents"), shall be deemed an issuance of Common Stock if the Net Consideration Per Share (as hereinafter determined) which may be received by the Corporation for such Common Stock Equivalents shall be less than the Series A Conversion

H06000144617 3

Value in effect at the time of such issuance. Any obligation, agreement or undertaking to issue Common Stock Equivalents at any time in the future shall be deemed to be an issuance at the time such obligation, agreement or undertaking is made or arises. No adjustment of the Series A Conversion Value shall be made under this Section 3(B)(3)(b) upon the issuance of any shares of Common Stock which are issued pursuant to the exercise, conversion or exchange of any Common Stock Equivalents if any adjustment shall previously have been made upon the issuance of any such Common Stock Equivalents as above provided.

(B) Should the Net Consideration Per Share of any such Common Stock Equivalents be decreased from time to time, then, upon the effectiveness of each such change, the Series A Conversion Value will be that which would have been obtained (1) had the adjustments made upon the issuance of such Common Stock Equivalents been made upon the basis of the actual Net Consideration Per Share of such securities, and (2) had adjustments made to the Series A Conversion Value since the date of issuance of such Common Stock Equivalents been made to the Series A Conversion Value as adjusted pursuant to (1) above. Any adjustment of the Series A Conversion Value with respect to this paragraph which relates to Common Stock Equivalents shall be disregarded if, as, and when all of such Common Stock Equivalents expire or are canceled without being exercised, so that the Series A Conversion Value effective immediately upon such cancellation or expiration shall be equal to the Series A Conversion Value in effect at the time of the issuance of the expired or canceled Common Stock Equivalents, with such additional adjustments as would have been made to the Series A Conversion Value had the expired or canceled Common Stock Equivalents not been issued.

(C) For purposes of this paragraph, the "Net Consideration Per Share" shall mean the amount equal to the total amount of consideration, if any, received by the Corporation for the issuance of such Common Stock Equivalents, plus the minimum amount of consideration, if any, payable to the Corporation upon exercise, or conversion or exchange thereof, divided by the aggregate number of shares of Common Stock that would be issued if all such Common Stock Equivalents were exercised, exchanged or converted. The "Net Consideration Per Share" which may be received by the Corporation shall be determined in each instance as of the date of issuance of Common Stock Equivalents without giving effect to any possible future upward price adjustments or rate adjustments which may be applicable with respect to such Common Stock Equivalents.

(iii) Consideration Other than Cash. For purposes of this Section 3(B)(3)(b), if a part or all of the consideration received by the Corporation in connection with the issuance of shares of the Common Stock or any other securities described in this Section 3(B)(3)(b) consists of property other than cash, such

H06000144617 3

consideration shall be deemed to have a fair market value as is reasonably determined in good faith by the Board of Directors of the Corporation.

(iv) Exceptions to Anti-dilution. This Section 3(B)(3)(b) shall not apply under any of the circumstances which would constitute an Extraordinary Common Stock Event (as defined in Section 3(B)(3)(b)(v)). Further, this Section 3(B)(3)(b) shall not apply with respect to:

(A) shares of Common Stock (or options to purchase such shares of Common Stock) issued or issuable to employees, officers or directors of, or consultants or advisors to, the Corporation pursuant to any stock purchase, option, incentive or other plan, agreement or arrangement approved by the Corporation's Board of Directors;

(B) securities issuable in connection with any stock split or stock dividend or upon any subdivision of shares of Common Stock;

(C) securities issued pursuant to the acquisition of another corporation or entity by the Corporation, approved by the Board of Directors, whether by consolidation, merger, purchase of all or substantially all of the assets, or other reorganization in which the Corporation acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty percent (50%) or more of the voting power of such other corporation or entity or fifty percent (50%) or more of the equity ownership of such other entity;

(D) shares of Common Stock issued or issuable (I) upon conversion of any Series A Preferred Stock, or (II) upon the exercise, conversion or exchange of any Common Stock Equivalents outstanding as of May 1, 2006; or

(E) upon the issuance, exercise, or conversion of options or warrants issued to equipment lessors, lenders and vendors of the Corporation, if approved by the Corporation's Board of Directors.

(v) Upon Extraordinary Common Stock Event. Upon the occurrence of an Extraordinary Common Stock Event (as hereinafter defined), the Series A Conversion Value shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the Series A Conversion Value by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock Event, and the product so obtained shall thereafter be the Series A Conversion Value; provided, that no such adjustment shall be required for any shares of Series A Preferred Stock with respect to any Extraordinary Common Stock Event occurring prior to the original issue date of such shares of Series A Preferred Stock. The Series A

H06000144617 3

Conversion Value, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Extraordinary Common Stock Event or Events. An "Extraordinary Common Stock Event" shall mean (A) the issue of additional shares of Common Stock as a dividend or other distribution on outstanding shares of Common Stock, (B) a subdivision of outstanding shares of Common Stock into a greater number of shares of Common Stock, or (C) a combination or reverse stock split of outstanding shares of Common Stock into a smaller number of shares of Common Stock.

(c) Automatic Conversion.

(i) Upon (x) the completion of a QPO, or (y) the election of holders of a majority of the shares of Series A Preferred Stock, all shares of Series A Preferred Stock then outstanding shall, by virtue and simultaneously with such QPO or election, and without any action on the part of the holders or the Corporation, be automatically converted into that number of fully paid and non-assessable shares of Common Stock into which such shares of Series A Preferred Stock are convertible pursuant to Section 3(B)(3)(a) hereof as of the closing of such Qualified Public Offering. A "QPO" means an underwritten public offering of the shares of Common Stock pursuant to an effective registration statement on Form S-1 or other appropriate form (or such successor for as then in effect) in which the gross proceeds to the Corporation equal or exceed \$15 million.

(ii) Upon the occurrence of the conversion events specified in the preceding paragraph (c)(i), the holders of the Series A Preferred Stock shall, upon notice from the Corporation, surrender the certificates representing such shares at the office of the Corporation or of its transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock so surrendered were convertible on the date on which such conversion occurred. The Corporation shall not be obligated to issue such certificates unless certificates evidencing the shares of Series A Preferred Stock being converted are either delivered to the Corporation or any such transfer agent, or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith.

(d) Capital Reorganization or Reclassification. If the Common Stock issuable upon the conversion of the Series A Preferred Stock shall be changed into the same or different number of shares of any class or classes of capital stock, whether by capital reorganization, recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for elsewhere in this Article IV, Section 3(B)(3), or a merger, consolidation or sale of all or substantially all of the Corporation's capital stock or assets to any other person), then and in each such event the holder of each share of Series A Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of capital stock and other securities and property receivable upon such reorganization, recapitalization, reclassification or other change by the holders of the number of shares of Common Stock into

H06000144617 3

which such shares of Series A Preferred Stock might have been converted immediately prior to such reorganization, recapitalization, reclassification or change, all subject to further adjustment as provided herein.

(e) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, re-capitalization or otherwise) the outstanding shares of Common Stock into a greater number of shares or if the Corporation at any time combines (by reverse stock split or otherwise) the outstanding shares of Common Stock into a smaller number of shares, the number of shares of Common Stock issuable upon conversion of any shares of Series A Preferred Stock shall be appropriately and proportionately increased or decreased, as the case may be.

(f) Merger, Consolidation or Sale of Assets. Subject to the provisions hereof, if at any time or from time to time there shall be a merger or consolidation of the Corporation with or into another corporation (other than a merger or reorganization involving only a change in the state of incorporation of the Corporation), or the sale of all or substantially all of the Corporation's capital stock or assets to any other person, then, as a part of such reorganization, merger, or consolidation or sale, a provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A 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, to which such holder would have been entitled if such holder had converted its shares of Series A Preferred Stock immediately prior to such capital reorganization, merger, consolidation or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Article IV, Section 3(B)(3) to the end that the provisions of this Article IV, Section 3(B)(3) (including adjustment of the number of shares of Common Stock or other securities issuable upon conversion of such shares of Series A Preferred Stock) shall be applicable after that event in as nearly equivalent a manner as may be practicable.

(g) Certificate as to Adjustments: Notice by Corporation. In each case of an adjustment or readjustment of the Conversion Ratio, the Corporation at its expense will furnish each holder of Series A Preferred Stock with a certificate prepared by the Treasurer or Chief Financial Officer of the Corporation, showing such adjustment or readjustment, and stating in detail the facts upon which such adjustment or readjustment is based.

(h) Exercise of Conversion Privilege. To exercise its conversion privilege, a holder of Series A Preferred Stock shall surrender the certificate or certificates representing the shares being converted to the Corporation at its principal office, and shall give written notice to the Corporation at that office that such holder elects to convert such shares. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series A Preferred Stock surrendered for conversion shall be accompanied by proper assignment thereof to the Corporation or in blank. The date when such written notice is received by the Corporation, together with the certificate or certificates representing the shares of Series A Preferred Stock being converted, shall be the "Conversion Date." As promptly as practicable after the Conversion Date, the Corporation shall issue and shall deliver to the holder of the shares of Series A Preferred Stock being converted, or on its

H06000144617 3

written order, such certificate or certificates as it may request for the number of whole shares of Common Stock issuable upon the conversion of such shares of Series A Preferred Stock in accordance with the provisions of this Article IV, Section 3(B)(3), rounded up to the nearest whole share as provided in Article IV, Section 3(B)(3)(i), in respect of any fraction of a share of Common Stock issuable upon such conversion. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date, and at such time the rights of the holder as holder of the converted shares of Series A Preferred Stock shall cease and the person(s) in whose name(s) any certificate(s) for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(i) No Issuance of Fractional Shares. No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon the conversion of shares of Series A Preferred Stock. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of Series A Preferred Stock, the Corporation shall round up to the next whole share of Common Stock issuable upon the conversion of shares of Series A Preferred Stock. The determination as to whether any fractional shares of Common Stock shall be rounded up shall be made with respect to the aggregate number of shares of Series A Preferred Stock being converted at any one time by any holder thereof, not with respect to each share of Series A Preferred Stock being converted.

(j) Partial Conversion. In the event some but not all of the shares of Series A Preferred Stock represented by a certificate(s) surrendered by a holder are converted, the Corporation shall execute and deliver to or on the order of the holder, at the expense of the Corporation, a new certificate representing the number of shares of Series A Preferred Stock which were not converted.

(k) Reservation of Common Stock. 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 A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock (including any shares of Series A Preferred Stock represented by any warrants, options, subscription or purchase rights for Series A Preferred Stock), and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock (including any shares of Series A Preferred Stock represented by any warrants, options, subscriptions or purchase rights for such Preferred Stock), the Corporation shall take such action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(l) No Reissuance of Preferred Stock. No share or shares of Series A Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue. Under such circumstances, the Corporation shall from time to time take such appropriate corporate action as may be necessary to reduce the authorized number of shares of the Series A Preferred Stock.

H06000144617 3

(4) Liquidation, Dissolution or Winding Up.

(a) Treatment at Sale, Liquidation, Dissolution or Winding Up. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment is made to any holders of any Common Stock, the holders of shares of Series A Preferred Stock shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock whether such assets are capital, surplus or earnings, an amount per share of Series A Preferred Stock equal to the sum of (i) the Original Issue Price (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving the Series A Preferred Stock), plus (ii) an additional amount equal to the equivalent of a simple interest return of eight percent (8%) per annum on the amount set forth in the foregoing clause (a)(i) (such amount, as so determined, is referred to herein as the "Series A Liquidation Value" with respect to such shares).

(b) Pro-rata Participation. After payment has been made to the holders of the Series A Preferred Stock in accordance with this Article IV, Section 3(B)(4), the remaining assets shall be distributed ratably among the holders of the then outstanding Common Stock.

(c) Insufficient Funds. If upon such liquidation, dissolution or winding up, the assets or surplus funds of the Corporation to be distributed to the holders of shares of Series A Preferred Stock shall be insufficient to permit payment to such respective holders of the full Series A Liquidation Value and all other preferential amounts payable with respect to the Series A Preferred Stock, the assets available for payment or distribution to such holders shall be distributed ratably among the holders of the then outstanding shares of the Series A Preferred Stock.

(5) Dividends. The holders of record of shares of the Series A Preferred Stock shall be entitled to receive, when and as declared by the Board, in its sole discretion, but only out of funds that are legally available therefor, dividends in the same form and per share amount, and payable at the same time as, any dividends declared or paid with respect to shares of the Common Stock. The Corporation shall not declare, pay or set aside any dividends on shares of its outstanding Common Stock (other than dividends on shares of Common Stock payable in shares of Common Stock) unless the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to the Minimum Dividend Amount. For purposes of this Section 3(B)(5), the "Minimum Dividend Amount" equals an amount per share of Series A Preferred Stock equal to the product of (A) the difference between (I) the amount of dividends declared, paid or set aside on each share of outstanding Common Stock subsequent to May 1, 2006, minus (II) the amount, if any, of dividends declared, paid or set aside on each share of Series A Preferred Stock subsequent to May 1, 2006, multiplied by (B) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend.

(6) Registration of Transfer. The Corporation will keep at its principal office a register for the registration of shares of Series A Preferred Stock. Upon the surrender of any

H06000144617 3

certificate representing shares of Series A Preferred Stock at such place, the Corporation will, at the request of the record holders of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing the aggregate number of shares of Series A Preferred Stock represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of Series A Preferred Stock as is required by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate.

(7) Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series A Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of an unsecured indemnity from the holder reasonably satisfactory to the Corporation or, in the case of such mutilation upon surrender of such certificate, the Corporation will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Series A Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

(8) Notices of Record Date. In the event of:

(a) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of capital stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Corporation, 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, or any other entity or person, or

(c) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation,

then and in each such event the Corporation shall mail or cause to be mailed to each holder of Series A Preferred Stock a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (iii) the time, if any, that 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, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up. Such notice shall be mailed by first class mail, postage prepaid, at least fifteen (15) days prior to the earlier of (1) the date specified in such notice on which such record is to be taken and (2) the date on which such action is to be taken.

H06000144617 3

(9) Notices. Except as otherwise expressly provided, all notices referred to herein will be in writing and will be deemed to have been duly given (i) on the date of service if served personally on the party to whom notice is to be given, (ii) on the date of transmittal of services via telecopy to the party to whom notice is to be given (with a confirming copy being delivered within 24 hours thereafter), (iii) on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or (iv) on the date of delivery if sent via overnight courier providing a receipt and in each case properly addressed (x) to the Corporation, at its principal executive offices and (y) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated in writing by any such holder).

(10) Restrictions and Limitations on Corporate Action and Amendments to Charter. The Corporation shall not take any corporate action without the approval by vote or written consent of the holders of more than fifty percent (50.0%) of the then outstanding shares of Series A Preferred Stock, if such corporate action or amendment would:

(a) alter or change the rights, preferences or privileges of the Series A Preferred Stock;

(b) increase or decrease the authorized number of shares of Common Stock, Series A Preferred Stock, or shares reserved for issuance under the Corporation's stock option plan;

(c) create a class or series of stock (or securities convertible into such shares) having any preference or priority over or on a parity with the Series A Preferred Stock;

(d) trigger the payment of a dividend or other distribution on Common Stock or requires the Corporation to redeem or repurchase Common Stock or Series A Preferred Stock (not including those actions pursuant to equity incentive agreements with employees, consultants, directors or other service providers which give the Corporation the right to repurchase shares at cost upon the termination of services);

(e) reclassify or recapitalize the outstanding capital stock of the Corporation;

(f) sell assets, merge, be acquired by or reorganize with another company in which the Corporation will not be the surviving entity, or participate in any transaction or series of transactions in which all or substantially all of the assets of the Corporation are sold, transferred or exclusively licensed,

(g) increase or decrease the size of the Board of Directors; or

(h) change the percentage of Series A Preferred Stock required to approve any of the foregoing.