

Florida Department of State
Division of Corporations
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TALLAHASSEE, FLORIDA

To:

Division of Corporations
Fax Number : (850) 617-6380

From:

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

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**COR AMND/RESTATE/CORRECT OR O/D RESIGN
EVERBANK FINANCIAL CORP**

Certificate of Status	0
Certified Copy	1
Page Count	54
Estimated Charge	\$43.75

AMENDED
RESTATE
DEC 2/2

To: FL Dept. of State
Subject:

From: Katie Wonsch

Tuesday, February 02, 2010 9:36 AM Page: 1 of 12



800-388-2123

**FAX
COVER
SHEET**

DATE: February 2, 2010
TIME: 9:35 am
TO: Karen Gibson
FIRM: FL Dept. of State
FAX# 850-245-6897
FROM: Katie Wonsch
RE: Everbank Financial Corp
#PAGES: 12, including cover sheet.
MESSAGE:

National and International Services

CORPORATE SERVICES

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**PUBLIC RECORDS RESEARCH &
INVESTIGATIONS**

Hi Karen,

Attached please find the revised first page along with replacement pages beginning with page #45 through the end of the document – can you please replace?

Thank you so much!

Katie

P.O. Box 38413 Tallahassee, FL 32315 515 East Park Avenue 32301 850-222-1173 Fax: 850-224-1640

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To: FL Dept. of State
Subject:

From: Katie Wonsch

Tuesday, February 02, 2010 9:36 AM Page: 2 of 12



February 1, 2010

FLORIDA DEPARTMENT OF STATE
Division of Corporations

EVERBANK FINANCIAL CORP
501 RIVERSIDE AVE.
12TH FLOOR
JACKSONVILLE, FL 32202

SUBJECT: EVERBANK FINANCIAL CORP
REF: P04000142463

**PLEASE GIVE ORIGINAL SUBMISSION
DATE AS FILE DATE.**

1/29

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

The date of adoption of each amendment must be included in the document.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6880.

Karen Gibson
Document Specialist Supervisor

FAX Aud. #: H10000020866
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**PLEASE GIVE ORIGINAL SUBMISSION
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H10000020866 3

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
EVERBANK FINANCIAL CORP
FORMERLY KNOWN AS EB FINANCIAL CORP**

10 JAN 29 AM 9:38
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FILED

The Articles of Incorporation of EB Financial Corp were filed with the Secretary of State of Florida on October 15, 2004, amended by Articles of Merger filed December 20, 2004, restated on January 2, 2005 and restated on July 17, 2008. Pursuant to Section 607.1003 of the Florida Business Corporation Act, the Board of Directors recommended the following Amended and Restated Articles of Incorporation to the Corporation's Shareholders, and the Shareholders approved this Amended and Restated Articles of Incorporation by written consent on October 21, 2009. Unless otherwise specified herein, all capitalized terms used in these Restated Articles of Incorporation shall have the meanings set forth in *Article XIX* hereof.

ARTICLE I

NAME AND ADDRESS

1.1 Name. The name of the corporation is EVERBANK FINANCIAL CORP (the "Corporation").

1.2 Address of Principal Office. The address of the Corporation's principal office is 501 Riverside Avenue, Jacksonville, Florida 32202.

ARTICLE II

DURATION

2.1 Duration. The Corporation shall exist perpetually.

ARTICLE III

PURPOSES

3.1 Purposes. The Corporation is organized for the purposes of transacting any or all lawful business permitted under the laws of the United States and of the State of Florida.

ARTICLE IV

AUTHORIZED CAPITAL

4.1 Capital Stock. The maximum number of shares of stock that the Corporation is authorized to have outstanding at any one time is eleven million (11,000,000) shares, each with a par value of \$0.01 per share (the "Capital Stock") divided into the following classes set forth below.

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4.2 Preferred Stock. The Corporation is authorized to have outstanding at any time one million (1,000,000) shares of preferred stock (the "Preferred Stock"), and which may be issued in one or more classes or series as further described in *Article VI*; and

4.3 Common Stock. The Corporation is authorized to have outstanding at any time ten million (10,000,000) shares of common stock (the "Common Stock"), of which nine million five hundred thousand (9,500,000) shares shall be designated as Voting Common Stock ("Voting Common Stock") and five hundred thousand (500,000) shares shall be designated as Nonvoting Common Stock ("Nonvoting Common Stock"). All such shares shall be issued fully paid and nonassessable.

ARTICLE V

COMMON STOCK

5.1 Voting Rights. Each holder of Voting Common Stock, as such, shall be entitled to one vote per share of Voting Common Stock held of record by such holder on all matters on which such Shareholders generally are entitled to vote. The holders of Nonvoting Common Stock, as such, shall have no voting power on any matter except as otherwise required by law or as otherwise expressly provided for herein. Notwithstanding any of the foregoing, and in addition to any other vote required by law, the affirmative vote of the outstanding shares of Nonvoting Common Stock, voting separately as a class, shall be required to amend, alter or repeal (including by merger, consolidation or otherwise) any provision of this Amended and Restated Articles of Incorporation that adversely affects the powers, preferences or rights of the Nonvoting Common Stock contained herein in a manner that is materially adverse from the effect of such amendment, alternation or repeal on the Voting Common Stock.

5.2 Conversion Rights. The holders of shares of Nonvoting Common Stock shall have the following conversion rights and obligations:

(a) **Optional Conversion.** At any time and from time to time, any holder of Nonvoting Common Stock may convert (in accordance with the conversion procedure specified in *Section 5.2(c)*) any number of shares of Nonvoting Common Stock on a share-for-share basis into an equal number of shares of Voting Common Stock; provided, however, that such conversion is by a transferee and in connection with or after (i) a transfer that is part of a widely distributed public offering of Voting Common Stock, (ii) a transfer that is part of a private placement in which no one party acquires the rights to purchase in excess of 2% of the Voting Common Stock then outstanding, (iii) a transfer to an underwriter for the purpose of conducting a widely distributed public offering, (iv) following a widely distributed public offering, a transfer not requiring registration under the Securities Act in reliance on Rule 144 thereunder in which no one party acquires in excess of 2% of the Voting Common Stock then outstanding or (v) a transaction approved by the Office of Thrift Supervision ("OTS") or, if the OTS is not the relevant regulatory authority, any other regulatory authority with the relevant jurisdiction. Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of shares of Nonvoting Common Stock into Voting Common Stock and by surrender of one or more certificate or certificates for the shares to be so converted to the Corporation at its principal office (or such other office or agency

of the Corporation as the Corporation may designate by notice in writing to the holders of Nonvoting Common Stock) at any time during its usual business hours, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Voting Common Stock shall be issued. Notwithstanding any other provisions hereof, if a conversion of Nonvoting Common Stock is to be made pursuant to this **Section 5.2(a)** in connection with any transaction affecting the Corporation, the conversion of any shares of Nonvoting Common Stock, may, at the election of the holder thereof, be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated, subject in all events to the terms hereof applicable to such transaction.

(b) **Conversion Procedure.** Until presented and surrendered for cancellation following such conversion, each certificate representing shares of Nonvoting Common Stock in respect of which a conversion has been made in accordance with **Section 5.2(a)** shall be deemed to represent the number of shares of Voting Common Stock into which such shares have been converted, and upon presentation and surrender of such certificate, duly endorsed, the holder thereof shall be entitled to receive a certificate for the appropriate number of shares of Voting Common Stock, or in the event such shares of Common Stock are not certificated, a notice of issuance of such shares of Voting Common Stock executed by an authorized officer of the Corporation. Upon a conversion pursuant to this **Section 5.2**, each converted share of Nonvoting Common Stock shall be retired. The Corporation shall from time to time reserve for issuance the number of shares of Voting Common Stock into which all outstanding shares of Nonvoting Common Stock may be converted.

5.3 Dividend Rights. Subject to the rights of any outstanding classes or series of Preferred Stock having preferential dividend rights, Common Stockholders are entitled to such dividends as may be declared by the Board out of lawfully available funds.

5.4 Dissolution. Upon the dissolution of the Corporation: (i) holders of any outstanding classes or series of Preferred Stock having preferential rights to such assets shall receive the distributions to which such Shareholders are entitled; and (ii) Common Stockholders shall receive a pro rata share of the Corporation's remaining net assets in accordance with the number of shares owned by each such Common Stockholder.

5.5 Relative Rights of Common Stockholders. Except as otherwise provided herein with regard to voting rights and conversion rights, Nonvoting Common Stock shall in all other respects carry the same rights and privileges as Voting Common Stock (including in respect of dividends and in respect of distributions upon any dissolution, liquidation or winding up of the Corporation) and be treated as the same as Voting Common Stock (including in any merger, consolidation, share exchange or other similar transaction); *provided* that if the Corporation shall in any manner split, subdivide or combine (including by way of a dividend payable in shares of Voting Common Stock or Nonvoting Common Stock) the outstanding shares of Voting Common Stock or Nonvoting Common Stock, the outstanding shares of the other class of stock shall likewise be split, subdivided or combined in the same manner proportionately and on the same basis per share, and *provided further*, no dividend payable in Voting Common Stock shall be declared on the Nonvoting Common Stock and no dividend payable in Nonvoting Common Stock shall be declared on the Voting Common Stock

but instead, in the case of a stock dividend, each class of Common Stock shall receive such dividend in like stock.

ARTICLE VI

PREFERRED STOCK

6.1 **Board Authorized To Issue Preferred Stock.** The Board is authorized to:

- (a) issue the Preferred Stock in one or more classes;
- (b) issue the Preferred Stock in one or more series within a class; and
- (c) establish the number of shares to be included in each class and series and the preferences, limitations and relative rights of each class and series by filing the appropriate Articles of Amendment with the Secretary of State of Florida. Each such amendment shall be effective without shareholder action.

6.2 **Preferences.** The preferences relating to the Preferred Stock shall include the preferential right to receive distributions of dividends or assets upon the dissolution of the Corporation before shares of Common Stock may receive such distributions.

6.3 **Series A Preferred Stock.**

(a) **In General.** Pursuant to the authority expressly granted to the Board by this ***Section 6.3***, the Board has: (i) established a series of the Corporation's Preferred Stock; and (ii) fixed the designation, number of shares and relative rights, preferences and limitations thereof as set forth below.

(b) **Designation.** The designation of the series of Preferred Stock shall be Series A 6% Cumulative Convertible Preferred Stock, \$0.01 par value ("**Series A Preferred Stock**").

(c) **Number Of Shares.** The number of shares of Series A Preferred Stock shall be 250,000. From time to time, the Board may increase or decrease such number of such shares, but not below the number of shares then outstanding.

(d) **Sub-Series.** The Board may: (i) issue Sub-Series of Series A Preferred Stock within the total shares thereof (such as Series A-1 or Series A-2 Preferred Stock); and (ii) establish a different Issuance Price for each Sub-Series.

(e) **Dividend Rights.**

(i) **Preferential Dividends.** The Series A Holders shall be entitled to receive Preferential Dividends, which shall be:

(A) received by the Series A Holders when and as declared by the Board;

(B) payable out of legally available funds on the Payment Date; and

(C) subject to accrual from the Issue Date at 6 percent per annum of the Issuance Price for each such share issued.

(ii) **Preferential Dividends Are Cumulative.**

Preferential Dividends shall be cumulative from the Issuance Date, regardless of whether there are funds legally available for the payment thereof. Accumulations of Preferential Dividends shall not bear interest.

(iii) **Dividends On Or Repurchase Of Junior Stock Until All Preferred Dividends Are Paid.** All Preferential Dividends shall be paid in full (or declared and a sufficient sum set apart for payment thereof) on all outstanding shares of Series A Preferred Stock for all past Dividend Periods before the Corporation may:

(A) declare, pay or set apart for payment any dividends or distributions on any Junior Stock, other than dividends paid in shares of the Junior Stock; or

(B) make any purchase or redemption of, or any sinking fund payment for the purchase or redemption of, any Junior Stock, other than a purchase or redemption: (1) made by issue or delivery of the Junior Stock; or (2) required by the terms of the Shareholder Agreement:

(iv) **Sinking Fund May Be Applied To Purchase Or Redemption Of Preferred Stock.** Notwithstanding the foregoing, any moneys properly deposited in any sinking fund with respect to any Preferred Stock may thereafter be applied to the purchase or redemption of such Preferred Stock in accordance with the terms of such sinking fund regardless of whether at the time of such application all Preferential Dividends payable on all outstanding shares of Series A Preferred Stock for all past Dividend Periods shall have been paid in full or declared and a sufficient sum set apart for payment thereof.

(v) **Pro Rata Dividends For Series A Preferred Stock And Parity Stock.** The Corporation may declare, on a pro rata basis: (i) Preferential Dividends with respect to shares of Series A Preferred Stock; and (ii) Parity Dividends with respect to the shares of Parity Stock. The amounts of Preferential Dividends declared per share of Series A Preferred Stock for the Dividend Period ending either on the same day or within the dividend period for the payment of Parity Dividends on the Parity Stock shall in all cases bear to each other the same ratio that accrued Preferential Dividends per share on the shares of Series A Preferred Stock and Parity Dividends on the shares of Parity Stock bear to each other.

(vi) **Additional Dividends.** In addition to Preferential Dividends, the Series A Holders shall be entitled to receive:

(A) such additional dividends as the Board, in its discretion, may declare; and

(B) a dividend per share equivalent to any cash dividend paid to the Common Stockholders; *provided, however*, that that each such dividend shall be payable: (A) when and as declared by the Board; (B) on the date such dividend is paid to the Common Stock Holders; and (C) out of legally available funds.

(f) **Liquidation.**

(i) **Conversion Upon Liquidation.** The Series A Holders shall automatically be deemed to have converted all shares of Series A Preferred Stock, as provided in *Section 6.3(h)* hereof, immediately prior to any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary.

(ii) **Merger Or Consolidation Is Not Liquidation.** The: (i) merger or consolidation of the Corporation into or with any other Person; or (ii) merger or consolidation of any other Person into or with the Corporation shall not be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this *Section 6.3(f)*.

(g) **Fundamental Corporate Change.**

(i) **Board Approval Notice.** The Corporation shall give written notice to the Series A Holders of a Board Approval of any Fundamental Corporate Change within ten (10) days after the Approval Date.

(ii) **Redeeming Series A Preferred Stock.** The Corporation may, at its option, redeem Series A Preferred Stock (the "**Series A Redeemed Stock**") from the Series A Holders on and after thirty (30) days following Board Approval of a Fundamental Corporate Change if a majority of the Series A Holders have not delivered to the Corporation their written consent to such Fundamental Corporate Change within twenty (20) days after the Board Approval Date. The Corporation shall determine the number of shares of Series A Redeemed Stock to be redeemed from each Series A Holder as follows:

$$\left\{ \frac{\text{Sum of Conversion Bases of all shares of Series A Preferred Stock owned by the Series A Holder}}{\text{The Fair Market Value thereof}} \right\}$$

(iii) **Converting Non-Series A Redeemed Stock.** If the Corporation elects to exercise its right to redeem the Series A Redeemed Stock, the Corporation may also elect to convert all remaining shares of Series A

Preferred Stock that are not Series A Redeemed Stock into Common Stock under the terms and conditions described herein.

(iv) **Redemption Notice.** The Corporation shall deliver by first class mail, postage prepaid, a Redemption Notice to the applicable Series A Holders at their respective addresses appearing on the Corporation's books and records no later than ten (10) days after the Approval Date. Each Redemption Notice shall be conclusively presumed to have been duly delivered, whether or not actually received, and shall include the:

- (A) number of shares of Series A Redeemed Stock;
- (B) Redemption Date;
- (C) Redemption Price;
- (D) right of the Series A Holder to convert Series A Preferred Stock into Common Stock until the close of business on the Business Day prior to the Redemption Date;
- (E) address where the Series A Certificates shall be surrendered for payment of the Redemption Price; and
- (F) direction for the Series A Holder to duly endorse each such Series A Certificate or include appropriate instruments or transfer satisfactory to the Corporation.

(v) **Paying The Redemption Price.** The Corporation shall pay the Redemption Price, without interest, to each Series A Holder who has properly surrendered hereunder all Series A Certificates relating to the Series A Redeemed Stock.

(vi) **Series A Cancelled Stock.** After delivering the Redemption Notice and depositing the Redemption Funds into an Approved Bank in trust for the holders of Series A Redeemed Stock, the Corporation may, at its option:

- (A) cancel all shares of Series A Redeemed Stock;
- (B) cause such Series A Redeemed Stock to be no longer outstanding; and
- (C) terminate all of the shareholder rights of the related Series A Holders other than the Series A Holders' right to: (1) convert the Series A Redeemed Stock to Common Stock under the terms of this **Section 6.3(g)** prior to the close of business on the Business Day prior to the Redemption Date; and (2) receive the Redemption Price, without interest, from the Redemption Funds upon surrender of the Series A Certificates relating to the Series A Redeemed Stock.

The Corporation may take the foregoing actions notwithstanding the fact that the Series A Holders have not surrendered all of the Series A Certificates for the Series A Cancelled Stock.

(vii) **Returning Unused Redemption Funds To The Corporation.** All Redemption Funds that:

(A) relate to Series A Stock converted to Common Stock before the close of business on the Business Day immediately preceding the Redemption Date shall be returned to the Corporation upon such conversion; and

(B) remain unclaimed by the applicable Series A Holders within six (6) years after the Redemption Date shall be repaid to the Corporation, on demand, and thereafter such Series A Holders shall look only to the Corporation for the payment, without interest, of the Redemption Price.

(viii) **No Redemption Or Purchase Of Series A Preferred Stock When Preferential Dividends Are In Arrears.** Until the Corporation has paid in full all Dividends in Arrears or set aside funds for the payment of all Dividends in Arrears, the Corporation shall not:

(A) redeem any shares of Series A Preferred Stock unless:
(A) all outstanding shares of Series A Preferred Stock are simultaneously redeemed; or (B) otherwise required by the Shareholder Agreement; and

(B) purchase or otherwise acquire any shares of Series A Preferred Stock, except in accordance with the purchase offer made by the Corporation on the same terms to all holders of record of Series A Preferred Stock for the purchase of all outstanding shares thereof except as otherwise required by the terms of the Shareholder Agreement, in the event that any Preferential Dividend payable on the Series A Preferred Stock shall be in arrears and until all such Preferential Dividends in arrears shall have been paid or declared and set apart for payment.

To the extent of any inconsistency between the provisions of this **Section 6.3(g)(viii)** and any other provision of these Articles, the provisions of this **Section 6.3(g)(viii)** shall control.

(h) **Conversion.**

(i) **Optional Conversion By Series A Holders.** The Series A Holders shall have the right, at their option, to convert their shares of Series A Preferred Stock into shares of Common Stock on the following terms and conditions:

(A) **Number Of Common Stock Shares Issued For Series A Converted Stock Shares.** The number of shares of Common Stock issued to each Series A Holder upon such conversion shall be determined as follows:

$$\left\{ \frac{\text{(Total Issuance Prices of Series A Converted Stock + Dividends in Arrears)}}{\text{Total Issuance Prices of Series A Converted Stock}} \right\}$$

(B) Delivering Conversion Notice And Surrendering Series A Certificates. Each Series A Holder who elects to convert Series A Preferred Stock into Common Stock shall:

- (1) deliver a Conversion Notice to the Corporation at the Designated Address;
- (2) deliver and surrender to the Corporation at the Designated Address each Series A Certificate relating to Series A Converted Stock;
- (3) duly endorse each such Series A Certificate or provide the Corporation with appropriate instruments of transfer, as the Corporation shall direct; and
- (4) include within the Conversion Notice each name and address under which such Series A Holder desires each Common Stock Certificate to be issued upon conversion.

(C) Delivering Common Stock Certificates. After such conversion, the Corporation shall promptly issue and deliver Common Stock Certificate(s) (to the extent such shares are issued in certificate form) for the number of whole shares of Common Stock issued upon conversion of such Series A Converted Stock surrendered to the Corporation hereunder, together with cash in lieu of any fractional share. Each such Common Stock Certificate shall be delivered to the applicable Series A Holder, or in the event such shares of Common Stock are not certificated, a notice of issuance of such shares of Common Stock executed by an authorized officer of the Corporation, who has surrendered his or her Series A Certificates to the Corporation at the Designated Address and in compliance with **Section 6.3(h)(i)(B)**.

(D) Conversion Date. The Corporation shall deem each share of Series A Converted Stock to have been converted to Common Stock immediately prior to the close of business on the date when the Corporation receives the related Series A Certificate and Conversion Notice in compliance with the terms of these Articles. Each Series A Holder entitled to receive the Common Stock upon such conversion shall be deemed for all purposes as a record holder of such Common Stock as of the close of business on such date.

(ii) Mandatory Conversion After Special Cash Dividend Distribution. The Corporation may, in its sole discretion, convert a whole number of shares of Series A Preferred Stock into Common Stock at any time after the Corporation makes a Special Cash Dividend Distribution to a Series

A Holder. Each such mandatory conversion shall comply with the terms and conditions set forth below.

(A) Number Of Common Stock Shares Issued For Series A Mandatory Converted Stock. The number of shares of Series A Preferred Stock subject to such conversion shall be determined as follows:

$$\left\{ \frac{\text{(Total Special Cash Dividend Distributions to Series A Holders - Cash distributions for previous conversions)}}{\text{Average Issuance Price for all Series A Preferred Stock outstanding}} \right\}$$

(B) Number Of Series A Preferred Stock That A Series A Holder Is Required To Convert. The number of shares of Series A Preferred Stock that each Series A Holder must convert to Common Stock shall be determined as follows:

	Shares of Series A Holder's Series A Converted Stock		Total shares of Series A Converted Stock
The ratio of	to	Shall equal the ratio of	to
	Series A Holder's Total shares of Series A Preferred Stock		Total Outstanding Shares of Series A Preferred Stock

(C) Fractional Shares. No fractional share of Series A Preferred Stock otherwise subject to conversion under such formula shall be subject to conversion.

(D) Conversion Date. A share of Series A Preferred Stock shall be deemed to have been converted to Common Stock immediately prior to the close of business on the date on when the Corporation exercises its right to require such conversion in accordance with the foregoing provisions. Each Series A Holder entitled to receive the Common Stock issuable upon such conversion shall be deemed for all purposes as a record holder of such Common Stock as of the close of business on such date.

(E) Number Of Common Stock Shares Issued For Series A Converted Stock. The number of shares of Common Stock issued to each Series A Holder upon such conversion shall be determined as follows:

$$\left\{ \frac{\text{Conversion Base of Series A Holder's Total Series A Converted Stock}}{\text{Total Issuance Price of Series A Holder's Total Series A Converted Stock}} \right\}$$

(F) Order Of Converting Sub-Series. If applicable, the Corporation shall first convert a Sub-Series of Series A Preferred Stock with the lowest Issuance Price and subsequently convert the Sub-Series with the next highest Issuance Price.

(G) Conversion Notice. Each Conversion Notice relating to a mandatory conversion shall be:

- (1) delivered by the Corporation by first class mail, postage prepaid, no later than ten (10) days after the date on which the Corporation determined to require such conversion;
- (2) mailed to each Series A Holder of record whose Series A Preferred Stock will be converted at such holder's respective address appearing on the Corporation's books and records;
- (3) conclusively presumed to have been duly delivered to each such Series A Holder, whether or not actually received; and
- (4) organized to include the: (a) number of shares of Series A Converted Stock owned by each such Series A Holder; (b) date fixed for conversion; and (c) Issuance Price therefor.

(H) Surrendering Series A Certificates. Series A Holders subject to mandatory conversion shall: (1) surrender their Series A Certificates to the Corporation at the Designated Address; and (2) duly endorse each such Series A Certificate or provide the Corporation with appropriate instruments of transfer, as the Corporation shall direct. The Corporation may withhold paying to such Series A Holder any dividends on Common Stock or Series A Preferred Stock until such time as the Series A Certificates relating to the Series A Converted Stock have been surrendered to the Corporation in accordance with the terms hereof.

(I) Delivering Common Stock Certificates. After such conversion, the Corporation shall promptly issue and deliver Common Stock Certificate(s) (to the extent such shares are issued in certificate form) for the number of whole shares of Common Stock issued upon conversion of such Series A Converted Stock surrendered to the Corporation hereunder, together with cash in lieu of any fractional share. Each such Common Stock Certificate shall be delivered to the applicable Series A Holder, or in the event such shares of Common Stock are not certificated, a notice of issuance of such shares of Common Stock executed by an authorized officer of the Corporation, who has surrendered his or her Series A Certificates to the Corporation at the Designated Address and in compliance with **Section 6.3(h)(ii)(H)**.

(J) Fractional Shares. Notwithstanding any other provision herein, no fractional shares of Common Stock shall be issued upon conversion of any shares of Series A Preferred Stock. If the conversion of any shares of Series A Preferred Stock results in a fractional share of Common Stock, the Corporation shall pay cash in lieu thereof in an amount equal to such fraction multiplied times the Issuance Price.

(K) Record Date. Whenever the Corporation converts shares of Series A Preferred Stock, the record date for the payment of any dividend on the Common Stock payable for the dividend period in which the conversion date occurs shall be the

same as the record date for the payment of Preferential Dividends on the Series A Converted Stock.

(L) Adjustments.

(1) If at any time the Corporation: (a) pays a dividend or makes a distribution to Common Stockholders in shares of Common Stock; (b) subdivides the outstanding shares of Common Stock into a larger number of shares; or (c) combines the outstanding shares of Common Stock into a smaller number of shares (each of which shall be referred to herein as a "Common Stock Transaction"), the Issuance Price shall be adjusted on the effective date of any such transaction as follows:

$$\left\{ \begin{array}{l} \text{Issuance Price in effect immediately} \\ \text{before Common Stock Transaction} \end{array} \right\} \times \frac{\text{Shares of Common Stock outstanding immediately prior to Common Stock Transaction}}{\text{Shares of Common Stock outstanding immediately after Common Stock Transaction}} \right\}$$

(2) If at any time the Corporation: (a) pays a dividend or makes a distribution to Series A Holders in shares of Series A Preferred Stock; (b) subdivides the outstanding shares of Series A Preferred Stock into a larger number of shares; or (c) combines the outstanding shares of Series A Preferred Stock into a smaller number of shares, the Issuance Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision or combination shall be adjusted proportionately together with the Redemption Price and the Conversion Base.

(3) Whenever the Issuance Price, Redemption Price or Conversion Base is so adjusted, the Corporation shall prepare for each Series A Holder of record a notice that: (a) is sent by first class mail, postage prepaid; (b) is mailed as soon as reasonably practicable after any such adjustment; (c) advises each Series A Holder that such adjustment has been made; (d) explains how such adjustment was calculated; and (e) discloses the amount of the adjusted Issuance Price, Redemption Price or Conversion Base.

(M) Non-Cash Distributions; Subscription Rights. The Corporation shall provide written notice to the Series A Holders of record that:

(1) shall be mailed to such Series A Holders at least twenty (20) days before: (a) declaring a Non-Cash

Distribution on the Common Stock; or (b) granting Subscription Rights to any Common Stockholder;

(2) identifies the date on which a record, if any, shall be taken for the purpose of such Non-Cash Distribution or Subscription Rights; and

(3) identifies the date as of which the Corporation shall determine the Common Stockholders of record entitled to such Non-Cash Distribution or Subscription Rights if no such record is taken thereof.

The legality or validity of any such Non-Cash Distribution or Subscription Right shall not be affected by any failure to give such notice or by any defect in such notice.

(N) Common Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the maximum number of shares of Common Stock issuable upon the conversion of all shares of Series A Preferred Stock then outstanding.

(O) Taxes. The Corporation shall pay any taxes that may be payable with respect to the issuance of shares of Common Stock upon conversion of shares of Series A Preferred Stock. Notwithstanding the foregoing, the Corporation shall not be required to pay any taxes that may be payable with respect to any transfer: (1) of shares of Series A Preferred Stock; or (2) involved in the issuance of shares of Common Stock in a name other than that in which the shares of Series A Converted Stock are registered. The Corporation shall not be required to transfer any such shares of Series A Preferred Stock or issue or deliver any such shares of Common Stock unless and until each Person requesting such transfer or issuance has paid to the Corporation the amount of any such taxes, or shall have established to the satisfaction of the Corporation that such taxes have been paid.

(i) Voting Rights. Except as otherwise provided herein, each Series A Holders of record shall be entitled to one vote for each share held on all matters for which the Common Stockholders of record are entitled to vote. Except as provided herein and where a separate vote of the Series A Preferred Stock is required by law, the Series A Holders of record shall vote together with the Common Stockholders of record and not as a separate class or series. If any Preferential Dividend payable on the Series A Preferred Stock is in arrears, the Series A Holders shall be entitled to the greater of: (i) one vote for each share of Series A Preferred Stock held; or (ii) one vote for each additional full share of Common Stock into which such Series A Holder's shares of Series A Preferred Stock taken as a whole are then convertible. For purposes of this **Section 6.3(i)**, Preferential Dividends on the Series A Preferred Stock shall not be deemed in arrears if they have been paid or declared and set apart for payment prior to the time of the taking of a vote by the Common Stockholders and the Series A Holders.

(j) Reacquired Shares. The Corporation shall restore all shares of Series A Preferred Stock converted, redeemed or otherwise purchased or acquired by the

Corporation to the status of authorized but unissued shares of Preferred Stock without designation as to series.

(k) **Definitions**. For purposes of this *Section 6.3*, unless the context or use indicates another meaning or intent, the following capitalized terms shall have the meanings set forth below, whether used in the singular or the plural:

"Common Stock Transaction" shall have the meaning set forth in *Section 6.3(h)(ii)(L)(1)*.

"Conversion Base" means the total Issuance Prices of the Series A Converted Stock + Dividends in Arrears.

"Conversion Notice" means a written notice from: (a) a Series A Holder that he or she irrevocably elects to convert the Series A Holder's Series A Preferred Stock; or (b) the Corporation that it requires a Series A Holder to convert his or her Series A Preferred Stock to Common Stock, as the context shall require.

"Designated Address" means an address to which the Corporation requires a Series A Holder to send a Conversion Notice and/or surrender a Series A Certificate, which address shall be office of the transfer agent designated by the Corporation or, if there is no such transfer agent, at the Corporation's head office or such other office as shall be designated by the Corporation.

"Dividends in Arrears" means the dividends in arrears on Series A Converted Stock, excluding all other amounts attributable to accrued and unpaid dividends for the current Dividend Period.

"Dividend Period" means: (a) each calendar quarter immediately preceding any Payment Date; or (b) if the Issue Date is not on the first day of a calendar quarter, the period beginning on the Issue Date and ending on the last day of the first full calendar quarter containing at least thirty (30) days.

"Fair Market Value" means the fair market value of one share of Series A Preferred Stock, as determined in good faith by the Board.

"Fundamental Corporate Change" means a transaction under which the Corporation: (a) consolidates with another Person and such other Person is the surviving Person; (b) merges into another Person and such other Person is the surviving Person; or (c) sells substantially all of the Corporation's assets to another Person.

"Junior Stock" means any stock ranking as to dividends junior to the Series A Preferred Stock.

"Non-Cash Distribution" means a dividend or any other distribution on the Corporation's stock, payable otherwise than in cash out of retained earnings.

"Parity Dividends" means the dividends paid on Parity Stock that are paid on parity with the Preferential Dividends paid on the Series A Preferred Stock.

"Parity Stock" means any class of Preferred Stock or series thereof with dividends ranking on parity with the Preferential Dividends paid on the Series A Preferred Stock.

"Payment Date" means the date on which the Corporation pays a Preferential Dividend to a Series A Holder, which date shall be: (a) the last business day of each calendar quarter following the Issue Date; and (b) starting on the last business day of the first calendar quarter following the Issue Date that contains at least thirty (30) days.

"Preferential Dividends" means the cumulative preferential cash dividends on shares of Series A Preferred Stock that rank prior to the payment of dividends on the Common Stock.

"Redemption Date" means the date on which the Corporation has determined to redeem Series A Redeemed Stock from a Series A Holder.

"Redemption Funds" means the funds that the Corporation may deposit, in trust, into a deposit account with an Approved Bank in an amount sufficient to pay in full the Redemption Price to Series A Holders in connection with the Series A Redeemed Stock owned thereby.

"Redemption Notice" means the Corporation's written notice to the Series A Holders that the Corporation intends to redeem shares of Series A Preferred Stock following: (a) Board Approval of a Fundamental Change; and (b) the failure of a majority of the Series A Holders to deliver to the Corporation written consent to such Fundamental Change within twenty (20) days after the Board Approval Date.

"Redemption Price" means the price paid by the Corporation to a Series A Holder for his or her Series A Redeemed Stock, which price shall be equal to the Fair Market Value x the number of shares of Series A Redeemed Stock.

"Series A Certificate" means a certificate issued by the Corporation representing shares of Series A Preferred Stock.

"Series A Converted Stock" means the shares of Series A Preferred Stock that: (a) a Series A Holder has elected to convert to Common Stock under *Section 6.3(h)(i)*; or (b) the Corporation has required a Series A Holder to convert to Common Stock under *Section 6.3(h)(ii)*.

"Series A Holders" means the holders of record of outstanding shares of Series A Preferred Stock.

"Series A Preferred Stock" shall have the meaning set forth in *Section 6.3(b)*.

"Series A Redeemed Stock" means the aggregate number of Series A Preferred Stock that the Corporation has elected to redeem from a Series A Holder.

"Special Cash Dividend Distribution" means a cash dividend distribution to the Series A Holders, other than the 6 percent per annum fixed dividend described in *Section 6.3(e)*.

"Subscription Rights" means a shareholder's rights to subscribe for or purchase any class of any shares of the Corporation's capital stock or any other such rights.

"Sub-Series" means a sub-series of Series A Stock owned by a Series A Holder.

6.4 Series B Preferred Stock.

(a) **In General.** Pursuant to the authority expressly granted to the Board by *Section 6.1*, the Board has: (i) established a series of the Corporation's Preferred Stock; and (ii) fixed the designation, number of shares and relative rights, preferences and limitations thereof as set forth below.

(b) **Designation.** There is hereby created out of the authorized and unissued Shares of Preferred Stock of the Corporation a series of preferred stock designated as the "4% Series B Cumulative Participating Perpetual Pay In Kind Preferred Stock" (the "Series B Preferred Stock").

(c) **Number Of Shares.** The number of shares constituting such series shall be 175,000 and shall include shares of Series B Preferred Stock issued as dividends on the Series B Preferred Stock pursuant to *Section 6.4(e)* hereof. The Series B Preferred Stock shall have a \$0.01 par value per Share and a liquidation preference of \$1,000 per Share.

(d) **Ranking.** The Series B Preferred Stock will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (i) on a parity with any other class or series of equity securities of the Corporation the terms of which do not expressly provide that such class or series will rank senior or junior to the Series B Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Corporation (collectively referred to as "Parity Securities"), and (ii) senior to the Common Stock and the Series A Preferred Stock and each other class or series of capital stock authorized, issued, outstanding or established after the Original Issue Date by the Corporation the terms of which do not expressly provide that it ranks on a parity with or senior to the Series B Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Corporation (collectively referred to as "Junior Securities"). The Corporation has the right to authorize and/or issue additional shares or classes or series of Junior Securities without the consent of the Holders.

(e) Dividends.

(i) Holders shall be entitled to receive, when, as and if declared by the Board or a duly authorized committee of the Board, out of the funds legally available therefor and in preference to dividends on any Junior Securities, dividends determined as set forth in *Section 6.4(e)(ii)* and *Section 6.4(e)(iii)* below, and no more. Such dividends shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date") or, if any such day is not a Business Day, the next Business Day. Notwithstanding the foregoing, the Board may elect to terminate

the Corporation's future dividend declaration and payment obligations set forth in **Section 6.4(e)(iii)** below with respect to the Series B Preferred Stock (other than any accrued but unpaid dividends as of the date of such election, which shall be payable in full at the time of such election) on or after the date that is 30 months following the Original Issue Date if the Book Value Per Share is equal to or exceeds the Applicable Conversion Price (such election, the "Preferred Dividend Termination"). Following the Preferred Dividend Termination, Holders shall be entitled to receive, when, as and if declared by the Board or a duly authorized committee of the Board, out of the funds legally available therefor, dividends determined as set forth in **Section 6.4(e)(ii)**, and no more.

(ii) If the Board or a duly authorized committee of the Board declares and pays a dividend in respect of Common Stock, then the Board or such duly authorized committee of the Board shall declare and pay to the Holders of the Series B Preferred Stock, on the same dates on which such dividend is declared or paid, as applicable, on the Common Stock, a dividend in an amount per share of Series B Preferred Stock equal to the product of (i) the per share dividend declared and paid in respect of each share of Common Stock and (ii) the number of shares of Common Stock into which such share of Series B Preferred Stock is then convertible.

(iii) During the period prior to the Preferred Dividend Termination the Holders of Series B Preferred Stock shall be entitled to cumulative dividends on the Liquidation Preference, from the date of issuance at a rate *per annum* equal to 4.00% (calculated with reference to the Liquidation Preference – with .001 shares of Series B Preferred Stock being equivalent to \$1.00 of Liquidation Preference). The dividends payable pursuant to this **Section 6.4(e)(iii)** shall be payable in additional shares of Series B Preferred Stock. If and when any shares are issued under this **Section 6.4(e)(iii)** for the payment of accrued dividends, such shares shall be validly issued and outstanding and fully paid and non-assessable and shall initially have an Applicable Conversion Price equal to that of the Series B Preferred Stock with respect to which it is issued. In the case of shares of Series B Preferred Stock issued on the Original Issue Date, dividends shall accrue and be cumulative from such date. In the case of shares of Series B Preferred Stock issued as a dividend on shares of Series B Preferred Stock, dividends shall accrue and be cumulative from the Dividend Payment Date in respect of which such shares were issued, or were scheduled to be issued (whether or not actually declared or issued), as a dividend. Dividends payable on the Series B Preferred Stock shall be computed on the basis of a 360-day year consisting of twelve 30-day months and shall be deemed to accumulate on a daily basis. To the extent not paid pursuant to this **Section 6.4(e)(iii)**, dividends on the Series B Preferred Stock shall accumulate for each Dividend Period, whether or not there are funds legally available for the payment of such dividends and whether or not dividends are declared. Accrued but unpaid dividends for any past dividend periods may be declared by the Board and paid on any date fixed by the Board, whether or not a regular Dividend Payment Date, to Holders of record on the books of the Corporation on such record date as may be fixed by the Board,

which record date shall be no more than 60 days prior to the payment date thereof. Shares of Series B Preferred Stock issued as dividends on the Series B Preferred Stock may be issued by the Corporation in certificate or book entry form. Certificates issued in payment of any dividend pursuant to this **Section 6.4(e)(iii)**, or a notice of issuance with respect to book entry shares, shall be delivered to the Holders entitled to receive such dividend no later than 15 Business Days following the Dividend Payment Date.

Each fractional share of Series B Preferred Stock outstanding shall be entitled to a ratably proportionate amount of all dividends accruing with respect to each outstanding share of Series B Preferred Stock pursuant to this **Section 6.4(e)**, and all such dividends with respect to such outstanding fractional shares shall be cumulative and shall accrue (whether or not declared), and shall be payable in the same manner and at such times as provided for in this **Section 6.4(e)** with respect to each outstanding share of Series B Preferred Stock. Each fractional share of Series B Preferred Stock outstanding shall also be entitled to a ratably proportionate amount of any other distributions made with respect to each outstanding share of Series B Preferred Stock, and all such distributions shall be payable in the same manner and at the same time as distributions on each outstanding share of Series B Preferred Stock.

(iv) Each dividend will be payable to Holders of record as they appear in the records of the Corporation at the close of business on the same record date (each, a "Record Date"), which (i) with respect to dividends payable pursuant to **Section 6.4(e)(ii)**, shall be the same day as the record date for the payment of the corresponding dividends to the holders of shares of Common Stock, which record date shall be no more than 60 days prior to the relevant Dividend Payment Date and (ii) with respect to dividends payable pursuant to **Section 6.4(e)(iii)**, shall be on the first day of the month in which the relevant Dividend Payment Date occurs or, if such date is not a Business Day, the first Business Day of such month.

(v) Whenever dividends on the Series B Preferred Stock are in arrears, the Corporation shall not declare or pay, or set apart for payment, dividends with respect to, or redeem, purchase or acquire any of, its Parity Securities or Junior Securities, other than (i) redemptions, purchases or other acquisitions of Junior Securities in connection with any benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants or in connection with a dividend reinvestment or shareholder stock purchase plan, (ii) any declaration of a dividend in connection with any shareholders' rights plan, or the issuance of rights, stock or other property under any shareholders' rights plan, or the redemption or repurchase of rights pursuant thereto, (iii) conversions into or exchanges for other Junior Securities and cash solely in lieu of fractional shares of the Junior Securities, and (iv) dividends on the Series A Preferred Stock, which shall continue to accrue and be payable. If dividends payable pursuant to **Section 6.4(e)(iii)** for any Dividend Payment Date are not paid in full, and there are issued and outstanding shares of Parity Securities with the same Dividend Payment Date, then all dividends declared on shares of the Series B Preferred Stock and such Parity Securities on

such date shall be declared pro rata so that the respective amounts of such dividends shall bear the same ratio to each other as full quarterly dividends per share payable on the shares of the Series B Preferred Stock pursuant to **Section 6.4(e)(iii)** and all such Parity Securities otherwise payable on such Dividend Payment Date (subject to their having been declared by the Board out of legally available funds and including, in the case of any such Parity Securities that bear cumulative dividends, all accrued but unpaid dividends) bear to each other.

(vi) If the Conversion Date with respect to any share of Series B Preferred Stock is prior to the record date for the payment of any dividend on the Common Stock, the Holder of such share of Series B Preferred Stock will not have the right to receive any corresponding dividends on the Series B Preferred Stock. If the Conversion Date with respect to any share of Series B Preferred Stock is after the Record Date for any declared dividend and prior to the payment date for that dividend, the Holder thereof shall receive that dividend on the relevant payment date if such Holder was the Holder of record on the Record Date for that dividend.

(f) **Liquidation.**

(i) In the event the Corporation voluntarily or involuntarily liquidates, dissolves or winds up, the Holders at the time shall be entitled to receive liquidating distributions in the amount that is the higher of (i) the Liquidation Preference per share of Series B Preferred Stock and (ii) the Adjusted Liquidation Preference per share of Series B Preferred Stock, plus an amount equal to any declared but unpaid dividends thereon to and including the date of such liquidation, out of assets legally available for distribution to the Corporation's shareholders, before any distribution of assets is made to the holders of the Common Stock or any other Junior Securities. Upon payment in full of the amounts determined in accordance with the preceding sentence, holders of Series B Preferred Stock shall not be entitled to receive any additional cash, property or other assets of the Corporation upon liquidation, dissolution or winding up of the Corporation. "**Adjusted Liquidation Preference**" means the amount of the liquidating distributions, as determined by the Corporation (or the trustee or other Person or Persons administering its liquidation, dissolution or winding-up in accordance with applicable law) as of a date that is at least 10 Business Days before the first liquidating distribution is made on Series B Preferred Stock, that would be made on the number of shares of Common Stock equal to the Liquidation Preference divided by the Applicable Conversion Price if all of the outstanding shares of Series B Preferred Stock had been converted into Common Stock on such date of determination and prior to any liquidating distribution having been made on shares of Series B Preferred Stock. The Corporation shall notify each Holder of the amount it has calculated as the Adjusted Liquidation Preference per share of Series B Preferred Stock by first class mail, postage prepaid, addressed to the Holders at their respective last addresses appearing on the books of the Corporation. Such mailing shall be made

not later than five Business Days before the first liquidating distribution is made on shares of Series B Preferred Stock.

(ii) In the event the assets of the Corporation available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Corporation, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series B Preferred Stock and the corresponding amounts payable on any Parity Securities, Holders and the holders of such Parity Securities shall share ratably in any distribution of assets of the Corporation in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.

(iii) The Corporation's consolidation or merger with or into any other entity, the consolidation or merger of any other entity with or into the Corporation, or the sale of all or substantially all of the Corporation's property or business will not constitute its liquidation, dissolution or winding up

(g) **Maturity.** The Series B Preferred Stock shall be perpetual unless converted in accordance with these Articles.

(h) **Redemption.** The Series B Preferred Stock shall not be subject to mandatory redemption, sinking fund or other similar provisions.

(i) **Conversion.**

(i) **Right to Convert.** Each share of Series B Preferred Stock shall be convertible, at the option of the Holder, at any time after the Original Issue Date, into shares of Common Stock as set forth below. The number of shares of Common Stock into which a share of Series B Preferred Stock shall be convertible shall be determined by dividing the Liquidation Preference by the Applicable Conversion Price (subject to the conversion procedures of **Section 6.4(j)** hereof) plus cash in lieu of fractional shares in accordance with **Section 6.4(n)** hereof.

(ii) **Mandatory Conversion.** Effective as of the close of business on the Mandatory Conversion Date with respect to the shares of Series B Preferred Stock of a Holder, such Holder's shares of Series B Preferred Stock shall automatically convert into shares of Common Stock as set forth below. The number of shares of Common Stock into which a share of Series B Preferred Stock shall be convertible shall be determined by dividing the Liquidation Preference by the Applicable Conversion Price (subject to the conversion procedures of **Section 6.4(j)** hereof) plus cash in lieu of fractional shares in accordance with **Section 6.4(n)** hereof.

(iii) **Accrued but Unpaid Dividends at Conversion.** Upon conversion of any shares of Series B Preferred Stock, the Holder shall have the right to receive an additional number of fully paid and non-assessable shares of Common Stock equal to the amount of all accrued and unpaid dividends on

such share of Series B Preferred Stock (other than previously declared dividends payable to a holder of record on a prior Record Date which dividends shall be paid by the Corporation to such holder on the next Dividend Payment Date) to the Conversion Date, whether or not declared, divided by the Applicable Conversion Price.

(j) **Conversion Procedure.**

(i) Before any Holder of shares Series B Preferred Stock shall be entitled to convert the same into shares of Common Stock, such Holder shall surrender the certificate or certificates therefore (to the extent that such shares are issued in certificate form), duly endorsed, at the office of the Corporation or of any transfer agent for such Series B Preferred Stock, and shall give written notice to the Corporation at its principal corporate office of the election to convert the same and shall state therein the name or names in which the shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such Holder of shares of Series B Preferred Stock, or to the nominee or nominees of such Holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid or, in the event such shares of Common Stock are not certificated, a notice of issuance of such shares executed by an authorized officer of the Corporation. Except as otherwise provided in **Section 6.4(i)** 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 B Preferred Stock to be converted, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date (the "Conversion Date"). If the conversion is in connection with an underwritten registered offering of securities, the conversion may, at the option of any holder tendering shares of Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the Persons entitled to receive the Common Stock upon conversion of shares of Series B Preferred Stock shall not be deemed to have converted such shares until immediately prior to the closing of such sale of securities.

(ii) Shares of Series B Preferred Stock duly converted in accordance with these Articles, or otherwise reacquired by the Corporation, will resume the status of authorized and unissued preferred stock, undesignated as to series and available for future issuance. The Corporation may from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series B Preferred Stock; *provided, however*, that the Corporation shall not take any such action if such action would reduce the authorized number of shares of Series B Preferred Stock below the number of shares of Series B Preferred Stock then outstanding plus any shares of Series B Preferred Stock to be paid as dividends.

(iii) The Person or Persons entitled to receive the Common Stock and/or cash, securities or other property issuable upon conversion of Series B Preferred Stock shall be treated for all purposes as the record holder(s) of such shares of Common Stock and/or securities as of the close of business on the Conversion Date with respect thereto. In the event that a Holder shall not by written notice designate the name in which shares of Common Stock and/or cash, securities or other property (including payments of cash in lieu of fractional shares) to be issued or paid upon conversion of shares of Series B Preferred Stock should be registered or paid or the manner in which such shares should be delivered, the Corporation shall be entitled to register and deliver such shares, and make such payment, in the name of the Holder and in the manner shown on the records of the Corporation.

(iv) On the Conversion Date with respect to any share of Series B Preferred Stock, certificates representing shares of Common Stock shall be issued and delivered to the Holder thereof or such Holder's designee upon presentation and surrender of the certificate evidencing the Series B Preferred Stock to the Corporation and, if required, the furnishing of appropriate endorsements and transfer documents and the payment of all transfer and similar taxes.

(k) **Anti-Dilution Adjustments.**

(i) The Conversion Price shall be subject to the following adjustments.

(A) **Stock Dividends and Distributions.** If the Corporation pays dividends or other distributions on the Common Stock in shares of Common Stock, then the Conversion Price in effect immediately prior to the Ex-Date for such dividend or distribution will be multiplied by the following fraction:

$$\frac{OS_0}{OS_1}$$

Where,

OS_0 = the number of shares of Common Stock outstanding immediately prior to Ex-Date for such dividend or distribution.

OS_1 = the sum of the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such dividend or distribution plus the total number of shares of Common Stock constituting such dividend or distribution.

For the purposes of this clause (A), the number of shares of Common Stock at the time outstanding shall not include shares acquired by the Corporation. If any dividend or

distribution described in this clause (A) is declared but not so paid or made, the Conversion Price shall be readjusted, effective as of the date the Board publicly announces its decision not to make such dividend or distribution, to such Conversion Price that would be in effect if such dividend or distribution had not been declared.

(B) Subdivisions, Splits and Combination of the Common Stock. If the Corporation subdivides, splits or combines the shares of Common Stock, then the Conversion Price in effect immediately prior to the effective date of such share subdivision, split or combination will be multiplied by the following fraction:

$$\frac{OS_0}{OS_1}$$

Where,

OS_0 = the number of shares of Common Stock outstanding immediately prior to the effective date of such share subdivision, split or combination.

OS_1 = the number of shares of Common Stock outstanding immediately after the opening of business on the effective date of such share subdivision, split or combination.

For the purposes of this clause (B), the number of shares of Common Stock at the time outstanding shall not include shares acquired by the Corporation. If any subdivision, split or combination described in this clause (B) is announced but the outstanding shares of Common Stock are not subdivided, split or combined, the Conversion Price shall be readjusted, effective as of the date the Board publicly announces its decision not to subdivide, split or combine the outstanding shares of Common Stock, to such Conversion Price that would be in effect if such subdivision, split or combination had not been announced.

(C) Issuance of Stock Purchase Rights. If the Corporation issues to all holders of the shares of Common Stock rights or warrants (other than rights or warrants issued pursuant to a dividend reinvestment plan or share purchase plan or other similar plans) entitling them, for a period of up to 45 days from the date of issuance of such rights or warrants, to subscribe for or purchase the shares of Common Stock at less than the Current Market Price on the date fixed for the determination of shareholders entitled to receive such rights or warrants, then the Conversion Price in effect immediately prior to the Ex-Date for such distribution will be multiplied by the following fraction:

$$\frac{OS_0 + Y}{OS_0 + X}$$

Where,

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Ex-Date

for such distribution.

X = the total number of shares of Common Stock issuable pursuant to such rights or warrants.

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights or warrants divided by the Current Market Price on the date fixed for the determination of shareholders entitled to receive such rights or warrants.

For the purposes of this clause (C), the number of shares of Common Stock at the time outstanding shall not include shares acquired by the Corporation. The Corporation shall not issue any such rights or warrants in respect of shares of the Common Stock acquired by the Corporation. In the event that such rights or warrants described in this clause (C) are not so issued, the Conversion Price shall be readjusted, effective as of the date the Board publicly announces its decision not to issue such rights or warrants, to the Conversion Price that would then be in effect if such issuance had not been declared. To the extent that such rights or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights or warrants upon the exercise of such rights or warrants, the Conversion Price shall be readjusted to such Conversion Price that would then be in effect had the adjustment made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In determining the aggregate offering price payable for such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants and the value of such consideration (if other than cash, to be determined by the Board).

(D) Debt or Asset Distributions. If the Corporation distributes to all holders of shares of Common Stock evidences of indebtedness, shares of capital stock, securities, cash or other assets (excluding any dividend or distribution referred to in clause (A) above, any rights or warrants referred to in clause (C) above, any dividend or distribution paid exclusively in cash, any consideration payable in connection with a tender or exchange offer made by the Corporation or any of its subsidiaries, and any dividend of shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit in the case of certain spin-off transactions as described below), then the Conversion Price in effect immediately prior to the Ex-Date for such distribution will be multiplied by the following fraction:

$$\frac{SP_0 - FMV}{SP_0}$$

Where,

SP_0 = the Current Market Price per share of Common Stock on such date.

FMV = the fair market value of the portion of the distribution applicable to one share of Common Stock on such date as determined by the Board.

In a "spin-off", where the Corporation makes a distribution to all holders of shares of Common Stock consisting of capital stock of any class or series, or similar equity interests of, or relating to, a subsidiary or other business unit, the Conversion Price will be adjusted on the fifteenth Trading Day after the effective date of the distribution by multiplying such Conversion Price in effect immediately prior to such fifteenth Trading Day by the following fraction:

$$\frac{MP_0}{MP_0 + MP_S}$$

Where,

MP_0 = the average of the Closing Prices of the Common Stock over the first ten Trading Days commencing on and including the fifth Trading Day following the effective date of such distribution.

MP_S = the average of the Closing Prices of the capital stock or equity interests representing the portion of the distribution applicable to one share of Common Stock over the first ten Trading Days commencing on and including the fifth Trading Day following the effective date of such distribution, or, if not traded on a national or regional securities exchange or over-the-counter market, the fair market value of the capital stock or equity interests representing the portion of the distribution applicable to one share of Common Stock on such date as determined by the Board.

In the event that such distribution described in this clause (D) is not so paid or made, the Conversion Price shall be readjusted, effective as of the date the Board publicly announces its decision not to pay or make such dividend or distribution, to the Conversion Price that would then be in effect if such dividend or distribution had not been declared.

(E) Cash Distributions. If the Corporation makes a distribution consisting exclusively of cash to holders of the Common Stock, excluding (1) any cash that is distributed in a Reorganization Event or as part of a "spin-off" referred to in clause (D) above, (2) any dividend or distribution in connection with the Corporation's liquidation, dissolution or winding up, and (3) any consideration payable in connection with a tender or exchange offer made by the Corporation or any of its subsidiaries, then in each event, the Conversion Price in effect immediately prior to the Ex-Date for such distribution will be multiplied by the following fraction:

$$\frac{SP_0 - DIV}{SP_0 - DIV}$$

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$$SP_0$$

Where,

SP_0 = the Closing Price per share of Common Stock on the Trading Day immediately preceding the Ex-Date.

DIV = the amount per share of Common Stock of the cash distribution, as determined pursuant to the introduction to this paragraph (E).

In the event that any distribution described in this clause (E) is not so made, the Conversion Price shall be readjusted, effective as of the date the Board publicly announces its decision not to pay such distribution, to the Conversion Price which would then be in effect if such distribution had not been declared.

(F) Self Tender Offers and Exchange Offers. If the Corporation or any of its subsidiaries successfully completes a tender or exchange offer for the Common Stock where the cash and the value of any other consideration included in the payment per share of the Common Stock exceeds the Closing Price per share of the Common Stock on the Trading Day immediately succeeding the expiration of the tender or exchange offer, then the Conversion Price in effect at the close of business on such immediately succeeding Trading Day will be multiplied by the following fraction:

$$\frac{OS_0 \times SP_0}{AC + (SP_0 \times OS_1)}$$

Where,

SP_0 = the Closing Price per share of Common Stock on the Trading Day immediately succeeding the expiration of the tender or exchange offer.

OS_0 = the number of shares of Common Stock outstanding immediately prior to the expiration of the tender or exchange offer, including any shares validly tendered and not withdrawn.

OS_1 = the number of shares of Common Stock outstanding immediately after the expiration of the tender or exchange offer.

AC = the aggregate cash and fair market value of the other consideration payable in the



tender or exchange offer, as determined by the Board.

In the event that the Corporation, or one of its subsidiaries, is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Corporation, or such subsidiary, is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Price shall be readjusted to be such Conversion Price that would then be in effect if such tender offer or exchange offer had not been made.

(G) Rights Plans. To the extent that the Corporation has a rights plan in effect with respect to the Common Stock on the Conversion Date, upon conversion of any shares of the Series B Preferred Stock, Holders will receive, in addition to the shares of Common Stock, the rights under the rights plan, unless, prior to the Conversion Date, the rights have separated from the shares of Common Stock, in which case the Conversion Price will be adjusted at the time of separation as if the Corporation had made a distribution to all holders of the Common Stock as described in clause (D) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(H) Issuance of Additional Shares of Common Stock Equivalents. If at any time the Corporation shall issue or sell any additional shares of Common Stock Equivalents for gross consideration in an amount per additional share of Common Stock Equivalents (on an as-converted basis, with respect to shares other than Common Stock) less than the Current Market Price (other than shares issued in respect of stock options granted pursuant to a plan approved by the shareholders of the Corporation), then the Conversion Price in effect at the close of business on such immediately succeeding Trading Day will be multiplied by the following fraction:

$$\frac{OS_0 + X}{OS_1}$$

Where,

OS_0 = the number of shares of Common Stock (including shares of Common Stock Equivalents on an as converted basis) outstanding immediately prior to such issue or sale.

OS_1 = the number of shares of Common Stock (including shares of Common Stock Equivalents on an as converted basis) outstanding immediately after such issue or sale.

X = the number of shares of Common Stock (including shares of Common Stock Equivalents on an as converted basis) which could be purchased at such Current Market Price with the aggregate consideration received from the issuance or sale of the additional shares of Common Stock Equivalents.

For purposes of this clause (H), the date as of which the Current Market Price per share of Common Stock (including shares of Common Stock Equivalents on an as converted basis) shall be computed shall be the earlier of (i) the date immediately prior to the date on which the Corporation shall enter into a firm contract for the issuance of such additional shares of Common Stock Equivalents or (ii) the date immediately prior to the date of actual issuance of such additional shares of Common Stock Equivalents.

(ii) The Corporation may make such decreases in the Conversion Price, in addition to any other decreases required by this **Section 6.4(k)**, if the Board deems it advisable to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of rights or warrants to acquire shares of Common Stock) or from any event treated as such for income tax purposes or for any other reason.

(iii) (A) All adjustments to the Conversion Price shall be calculated to the nearest 1/10 of a cent. No adjustment in the Conversion Price shall be required if such adjustment would be less than \$0.01; *provided*, that any adjustments which by reason of this subparagraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment; *provided further* that on the Conversion Date adjustments to the Conversion Price will be made with respect to any such adjustment carried forward and which has not been taken into account before such date.

(B) No adjustment to the Conversion Price shall be made if Holders participate in or receive the benefits of the transaction that would otherwise give rise to an adjustment (including, without limitation, by receiving dividends pursuant to **Section 6.4(e)(ii)** above), without having to convert the Series B Preferred Stock, as if they held the full number of shares of Common Stock into which a share of the Series B Preferred Stock may then be converted.

(C) The Applicable Conversion Price shall not be adjusted:

(1) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Corporation's securities and the investment of additional optional amounts in shares of Common Stock under any such plan;

(2) upon the issuance of any shares of Common Stock or rights or warrants to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Corporation or any of its subsidiaries;

(3) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the Original Issue Date and not substantially amended thereafter;

(4) for a change in the par value or no par value of Common Stock; or

(5) for accrued and unpaid dividends on the Series B Preferred Stock.

(iv) Whenever the Conversion Price is to be adjusted in accordance with *Section 6.4(k)(i)* or *Section 6.4(k)(ii)*, the Corporation shall: (A) compute the Conversion Price in accordance with *Section 6.4(k)(i)* or *Section 6.4(k)(ii)*, taking into account the threshold set forth in *Section 6.4(k)(iii)* hereof; (B) as soon as practicable following the occurrence of an event that requires an adjustment to the Conversion Price pursuant to *Section 6.4(k)(i)* or *Section 6.4(k)(ii)*, taking into account the threshold set forth in *Section 6.4(k)(iii)* hereof (or if the Corporation is not aware of such occurrence, as soon as practicable after becoming so aware), provide, or cause to be provided, a written notice to the Holders of the occurrence of such event; and (C) as soon as practicable following the determination of the revised Conversion Price in accordance with *Section 6.4(k)(i)* or *Section 6.4(k)(ii)* hereof, provide, or cause to be provided, a written notice to the Holders setting forth in reasonable detail the method by which the adjustment to the Conversion Price was determined and setting forth the revised Conversion Price.

(v) Without the approval of the holders of a majority of the then outstanding shares of Series B Preferred Stock, the Corporation will not, by amendment of the Articles or through any recapitalization, reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation (including, without limitation, to affect the calculation of the Conversion Price in any way adverse to the holders of Series B Preferred Stock from the calculation thereof that would have been applicable in the absence of such action), but will at all times in good faith assist in the carrying out of all the provisions of *Sections 6.4(j)* and *6.4(k)* hereof and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series B Preferred Stock against impairment.

(l) **Reorganization Events.**

(i) In the event that, prior to any Conversion Date with respect to the shares of Series B Preferred Stock of any Holder there occurs:

(A) any consolidation, merger or other similar business combination of the Corporation with or into another Person, in each case pursuant to which the Common Stock will be converted into cash, securities or other property of the Corporation or another Person;

(B) any sale, transfer, lease or conveyance to another Person of all or substantially all of the property and assets of the Corporation, in each case pursuant to which the Common Stock will be converted into cash, securities or other property of the Corporation or another Person;

(C) any reclassification of the Common Stock into securities including securities other than the Common Stock; or

(D) any statutory exchange of the outstanding shares of Common Stock for securities of another Person (other than in connection with a merger or acquisition);

any such event specified in this **Section 6.4(l)(i)**, a "Reorganization Event"; then each share of such Holder's Series B Preferred Stock outstanding immediately prior to such Reorganization Event shall automatically convert, effective as of the consummation of the Reorganization Event, into the type and amount of securities, cash and other property receivable in such Reorganization Event by the holder (excluding the counterparty to the Reorganization Event or an affiliate of such counterparty) of the greater of (i) the number of shares of Common Stock into which one share of Series B Preferred Stock would then be convertible and (ii) the number of shares of Common Stock that, if one share of Series B Preferred Stock were converted into such number of shares, would result in the fair market value of the securities, cash and other property receivable in such Reorganization Event by a Holder of such number of shares equaling the Liquidation Preference (such securities, cash and other property, the "Exchange Property"). In the event that a Reorganization Event referenced in **Section 6.4(l)(i)** involves common stock as all or part of the consideration being offered in a fixed exchange ratio transaction, the fair market value per share of such common stock shall be determined by reference to the average of the closing prices of such common stock for the ten Trading Day period ending immediately prior to the consummation of such Reorganization Event.

(ii) In the event that holders of the shares of Common Stock have the opportunity to elect the form of consideration to be received in such transaction, the consideration that the Holders are entitled to receive shall be deemed to be the types and amounts of consideration received by the majority of the holders of the shares of Common Stock that affirmatively make an election.

(iii) The above provisions of this **Section 6.4(l)** shall similarly apply to successive Reorganization Events and the provisions of **Section 6.4(k)** shall apply to any shares of capital stock of the Corporation (or any successor) received by the holders of the Common Stock in any such Reorganization Event.

(iv) The Corporation (or any successor) shall, within seven days of the consummation of any Reorganization Event, provide written notice to the Holders of such consummation of such event and of the kind and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this *Section 6.4(l)*.

(v) The Corporation shall not enter into any agreement for a transaction constituting a Reorganization Event unless such agreement provides for or does not interfere with or prevent (as applicable) conversion of the Series B Preferred Stock into the Exchange Property in a manner that is consistent with and gives effect to this *Section 6.4(l)*.

(m) **Voting Rights.**

(i) Except as provided by law or as otherwise expressly provided herein with respect to special class voting arrangements, the Holder of each share of Series B Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Series B Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock as a single class, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all fractional shares into which shares of Series B Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(ii) So long as any shares of Series B Preferred Stock are outstanding, the vote or consent of the Holders of a majority of the shares of Series B Preferred Stock at the time outstanding, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required by law:

(A) any amendment, alteration or repeal (including by means of a merger, consolidation or otherwise) of any provision of the Articles or the Corporation's bylaws that would alter or change the rights, preferences or privileges of the Series B Preferred Stock so as to affect them adversely;

(B) increase or decrease the total number of authorized shares of Series B Preferred Stock or issue additional shares of Series B Preferred Stock (other than by conversion or in connection with the declaration or payment of dividends on the Series B Preferred Stock);

(C) authorize or issue, or obligate itself to issue, any equity security (including any security convertible into or exercisable for any such equity security) having a preference over, or being on a parity with, the Series B Preferred Stock with respect to dividend rights and rights on liquidation, winding up and dissolution;

(D) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any Series B Preferred Stock or any of the Corporation's Common Stock or Junior Securities; *provided, however*, that this restriction shall not apply to (1) the repurchase of shares of Common Stock from employees, officers or directors of the Corporation or any subsidiary pursuant to agreements existing as of the Original Issue Date or agreements approved by the Board from time to time, and (2) the redemption or repurchase of shares of Common Stock (exclusive of any Common Stock repurchased pursuant to (1) immediately above) representing in the aggregate not more than 5% of the Corporation's outstanding capital stock pursuant to the terms of that certain EverBank Financial Corp Stock Redemption and Shareholder Agreement, as the same may be amended from time to time;

provided, however, that any increase in the amount of the authorized preferred stock or any securities convertible into preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of any series of preferred stock or any securities convertible into preferred stock ranking junior to the Series B Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon the Corporation's liquidation, dissolution or winding up will not, in and of itself, be deemed to adversely affect the voting powers, preferences or special rights of the Series B Preferred Stock.

(iii) (A) If and when dividends on the Series B Preferred Stock have not been declared and paid for at least six consecutive Dividend Payment Dates or their equivalents, the authorized number of directors then constituting the Board shall automatically be increased by two and, notwithstanding anything to the contrary in the Bylaws of the Corporation, the holders of Series B Preferred Stock shall be entitled to elect directors to fill such newly created board vacancies (such new directors, the "Preferred Stock Directors") at any annual or special meeting of shareholders at which directors are to be elected or any special meeting of the holders of Series B Preferred Stock for which dividends have not been paid, as provided below, but only to the extent that the election of one or both of the Preferred Stock Directors has, to the extent required, been approved by applicable bank regulatory authorities and would not cause the Corporation to violate the corporate governance requirements of any exchange on which securities of the Corporation may then be listed that listed companies must have a majority of independent directors. In addition, the Board will at no time have more than two Preferred Stock Directors.

(B) At any time after the holders of Series B Preferred Stock have power to vote for Preferred Stock Directors and such power is continuing, the Secretary of the Corporation may, and upon the written request of holders of at least a majority of the outstanding shares of Series B Preferred Stock (addressed to the Secretary of the Corporation) must, call a special meeting of the holders of Series B Preferred Stock for the

election of the Preferred Stock Directors. Notice for such special meeting will be given in the manner provided in the Bylaws of the Corporation for a special meeting of the Shareholders (as such term is defined in the Bylaws of the Corporation), or as required by law, and shall set forth reasonable procedures for the nomination of Preferred Stock Directors by holders of the Series B Preferred Stock. If the Secretary of the Corporation is required to call a meeting but does not do so within 20 days after receipt of any such request, then any holder of shares of Series B Preferred Stock may (at the Corporation's expense) call such meeting, upon providing notice pursuant to the preceding sentence and, for that purpose, will be granted access to the Corporation's share transfer books and to any other materials used to determine the current names and addresses of its holders of capital stock in connection with providing notice of and conducting a special meeting pursuant to the Corporation's Bylaws. For purposes of any election of one or more Preferred Stock Directors, the holders of the Series B Preferred Stock shall vote alone as a single class and no other class or series of capital stock shall be entitled to participate in such election. Each Preferred Stock Director elected at any meeting of the holders of the Series B Preferred Stock or the holders of capital stock shall hold office until the next annual meeting of holders of capital stock and until his successor shall have been elected and qualified or until his earlier resignation, removal from office by the holders of shares of Series B Preferred Stock, death, or termination as described **Section 6.4(m)(iii)(C)**, below. In case any vacancy occurs among the Preferred Stock Directors, a successor shall be elected by the Board to serve until the next annual meeting of the shareholders upon the nomination of the then remaining Preferred Stock Director or, if none remains in office, by the vote of the holders of a majority of the voting power of the then outstanding shares of Series B Preferred Stock. The Preferred Stock Directors shall each be entitled to one vote per director on any matter presented to the Board for a vote.

(C) At such time as full dividends have been paid in respect of the Series B Preferred Stock (including amounts accumulated and previously undeclared or unpaid thereon) for at least two consecutive Dividend Payment Dates, the rights of the holders of Series B Preferred Stock to elect the Preferred Stock Directors shall cease (subject to reapplication of the provisions of this **Section 6.4(m)(iii)** upon a failure by the Corporation to declare and pay voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods), the terms of office of all Preferred Stock Directors will immediately terminate and the number of directors constituting the Board shall automatically be reduced accordingly.

(iv) Notwithstanding the foregoing, holders of shares of Series B Preferred Stock shall not have any voting rights if, at or prior to the effective time of the act with respect to which such vote would otherwise be required, all outstanding shares of Series B Preferred Stock shall have been converted into shares of Common Stock.

(n) **Fractional Shares.**

(i) No fractional shares of Common Stock will be issued as a result of any conversion of shares of Series B Preferred Stock.



(ii) In lieu of any fractional share of Common Stock otherwise issuable in respect of any conversion pursuant to **Section 6.4(i)** hereof, the Corporation shall pay an amount in cash (computed to the nearest cent) equal to the same fraction of the Closing Price of the Common Stock determined as of the second Trading Day immediately preceding the Conversion Date.

(iii) If more than one share of the Series B Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series B Preferred Stock so surrendered.

(o) **Reservation of Common Stock.**

(i) The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock or shares acquired by the Corporation, solely for issuance upon the conversion of shares of Series B Preferred Stock as provided in these Articles, free from any preemptive or other similar rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series B Preferred Stock then outstanding. For purposes of this **Section 6.4(o)**, the number of shares of Common Stock that shall be deliverable upon the conversion of all outstanding shares of Series B Preferred Stock shall be computed as if at the time of computation all such outstanding shares were held by a single Holder.

(ii) Notwithstanding the foregoing, the Corporation shall be entitled to deliver upon conversion of shares of Series B Preferred Stock, as herein provided, shares of Common Stock acquired by the Corporation (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such acquired shares are free and clear of all liens, charges, security interests or encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(iii) All shares of Common Stock delivered upon conversion of the Series B Preferred Stock shall be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(iv) Prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Series B Preferred Stock, the Corporation shall use its reasonable best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(p) **Replacement Certificates.**

(i) The Corporation shall replace any mutilated certificate at the Holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the Holder's expense upon delivery to the Corporation of satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Corporation.

(ii) The Corporation shall not be required to issue any certificates representing the Series B Preferred Stock on or after the conversion of all of the Series B Preferred Stock pursuant to **Section 6.4(i)**. In place of the delivery of a replacement certificate following the Conversion Date, the Corporation, upon delivery of the evidence and indemnity described in clause (i) above, shall deliver the shares of Common Stock pursuant to the terms of the Series B Preferred Stock formerly evidenced by the certificate.

(q) **Miscellaneous.**

(i) All notices referred to herein shall be in writing, and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given upon the earlier of receipt thereof or three Business Days after the mailing thereof if sent by registered or certified mail (unless first-class mail shall be specifically permitted for such notice under the terms of these Articles) with postage prepaid, addressed: (i) if to the Corporation, to its office at 501 Riverside Avenue, Jacksonville, FL 32202, Attention: General Counsel, or (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Corporation, or (iii) to such other address as the Corporation or any such Holder, as the case may be, shall have designated by notice similarly given.

(ii) The Corporation shall pay any and all stock transfer and documentary stamp taxes that may be payable in respect of any issuance or delivery of shares of Series B Preferred Stock or shares of Common Stock or other securities issued on account of Series B Preferred Stock pursuant hereto or certificates representing such shares or securities. The Corporation shall not, however, be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Series B Preferred Stock or Common Stock or other securities in a name other than that in which the shares of Series B Preferred Stock with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any Person other than a payment to the registered holder thereof, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid or is not payable.

(iii) No share of Series B Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated issued or granted.

(iv) The shares of Series B Preferred Stock shall not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Articles or as provided by applicable law.

(r) **Definitions.** For purposes of this *Section 6.4*, unless the context or use indicates another meaning or intent, the following capitalized terms shall have the meanings set forth below, whether used in the singular or the plural:

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Adjusted Liquidation Preference" has the meaning set forth in *Section 6.4(f)(i)*.

"Applicable Conversion Price" means the Conversion Price in effect at any given time.

"Book Value Per Share" means, as of the last day of the month immediately prior to the date of determination, the quotient of (i) the sum of (A) total shareholder's equity (determined in accordance with GAAP), plus (B) accumulated other comprehensive loss (determined in accordance with GAAP), minus (C) accumulated other comprehensive income (determined in accordance with GAAP), minus (D) \$4,067,539, divided by (ii) the sum of (A) the total shares of Common Stock outstanding, plus (B) the number of shares of Common Stock into which the then outstanding Series A Preferred Stock and Series B Preferred Stock could be converted, adjusting for, in the case of this clause (ii), the dilutive impact of restricted shares and options using the treasury stock method in accordance with GAAP (assuming the value per share used in applying the treasury stock method for purposes of calculating the dilutive impact of restricted shares and options is calculated using the book value determined in accordance with this definition). For the purposes of determining Book Value Per Share, any changes in GAAP following the Original Issue Date that result in a material change to Total Shareholders' Equity shall be disregarded and Total Shareholder's Equity shall continue to be calculated or construed as if such changes had not occurred.

"Closing Price" of the Common Stock (or other relevant capital stock or equity interest) on such date of determination means (i) prior to an IPO, the Market Value of such security and (ii) following an IPO, the closing sale price as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or

other relevant capital stock or equity interest) is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national or regional securities exchange on which the Common Stock (or other relevant capital stock or equity interest) is so listed or quoted, or if the Common Stock (or other relevant capital stock or equity interest) is not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price for the Common Stock (or other relevant capital stock or equity interest) in the over-the-counter market as reported by Pink Sheets LLC or similar organization, or, if that bid price is not available, the Market Value of the Common Stock (or other relevant capital stock or equity interest) on that date.

"Common Stock Equivalents" means Common Stock or securities exercisable, exchangeable or convertible into shares of Common Stock.

"Conversion Date" has the meaning set forth in *Section 6.4(j)(i)*.

"Conversion Price" means the Initial Conversion Price, subject to adjustment as set forth herein; *provided* that, until such time as the Initial Conversion Price is finally determined pursuant to Section 1.3 of that certain Investment Agreement dated on or about July 21, 2008, between the Corporation and Sageview Partners L.P. the Conversion Price shall be \$128.29 per share of Series B Preferred Stock, subject to adjustment as set forth herein.

"Current Market Price" means (i) prior to an IPO, the Market Value of the Common Stock (or other relevant capital stock or equity interest) and (ii) following an IPO, on any date, the average of the daily Closing Price per share of the Common Stock or other securities on each of the five consecutive Trading Days preceding the earlier of the day before the date in question and the day before the Ex-Date with respect to the issuance or distribution giving rise to an adjustment to the Conversion Price pursuant to *Section 6.4(k)*.

"Dividend Payment Date" has the meaning set forth in *Section 6.4(e)(i)*.

"Dividend Period" means each period from and including a Dividend Payment Date (or the Original Issue Date for the first Dividend Payment Date) to but excluding the next Dividend Payment Date.

"Exchange Property" has the meaning set forth in *Section 6.4(l)(i)*.

"Ex-Date", when used with respect to any issuance or distribution, means the first date on which the Common Stock or other securities trade (or, prior to an IPO, may be transferred) without the right to receive the issuance or distribution giving rise to an adjustment to the Conversion Price pursuant to *Section 6.4(k)*.

"GAAP" means generally accepted accounting principles in the United States as in effect from time to time.

"Holder" means the Person in whose name the shares of the Series B Preferred Stock are registered, which may be treated by the Corporation as the absolute owner of the shares of Series B Preferred Stock for the purpose of making payment and settling the related conversions and for all other purposes.

"Independent Investment Banking Firm" means an investment banking firm of nationally recognized standing that is, in the reasonable judgment of the Person engaging such firm, qualified to perform the task for which it has been engaged.

"Initial Conversion Price" has the meaning set forth in that certain Investment Agreement dated on or about July 21, 2008, between the Corporation and Sageview Partners L.P.

"IPO" means the initial underwritten public offering of Common Stock.

"Junior Securities" has the meaning set forth in *Section 6.4(d)*.

"Liquidation Preference" means, as to the Series B Preferred Stock, \$1,000 per share (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series B Preferred Stock).

"Mandatory Conversion Date" means the date that is the fifth anniversary of the Original Issue Date.

"Market Value" means, as of any determination date, with respect to Common Stock (or other relevant capital stock, equity interest or other property) the fair market value thereof as determined by an Independent Investment Banking Firm selected by the Holder and reasonably acceptable to the Corporation. The Corporation shall bear the fees and expenses of any Independent Investment Banking Firm involved in the determination of Market Value.

"Original Issue Date" means the date on which shares of the Series B Preferred Stock are first issued.

"Parity Securities" has the meaning set forth in *Section 6.4(d)*.

"Preferred Dividend Termination" has the meaning set forth in *Section 6.4(e)(i)*.

"Preferred Stock Directors" has the meaning set forth in *Section 6.4(m)(iii)*.

"Record Date" has the meaning set forth in *Section 6.4(e)(iv)*.

"Reorganization Event" has the meaning set forth in *Section 6.4(l)(i)*.

"Trading Day" means a day on which the principal national securities exchange on which the Common Stock is listed or admitted to trading is open for the transaction of business or, if the Common Stock is not listed or admitted to trading on any national securities exchange, a day other than a Saturday, Sunday or a day on which banking institutions in the State of New York or the State of Florida are authorized or obligated by law or executive order to close.

ARTICLE VII

RIGHT OF FIRST REFUSAL

7.1 Right of First Refusal to Redeem or Acquire Shares Disposed of By Shareholders. If at any time any Shareholder desires or is required to Dispose of all or any of such Disposing Shareholder's Shares (the "Offered Shares"), such Disposing Shareholder shall send to the Corporation and all of the Shareholders a Disposing Shareholder's First Refusal Notice offering to Dispose of the Offered Shares at the First Refusal Price.

7.2 Corporation May Elect Within 20 Days To Redeem Shares. The Corporation may elect to redeem any or all of such Offered Shares by sending written notice of such election to the Disposing Shareholder and all of the Shareholders within twenty (20) days after the First Refusal Mailing Date. Such notice shall specify the number of Offered Shares that the Corporation has determined to redeem.

7.3 Shareholders May Elect Within 45 Days To Redeem Remaining Shares. The Shareholders may purchase at the First Refusal Price any Offered Shares that the Corporation does not redeem under *Section 7.2*, on a Pro-Rata basis. Each such Shareholder electing to purchase any such Offered Shares shall notify the Disposing Shareholder and the Corporation of such election within forty-five (45) days after the First Refusal Mailing Date. Each such notice shall specify the number of Offered Shares that such Shareholder is willing to purchase.

7.4 Allocation Of Non-Purchased Shares To Other Electing Shareholders. If any electing Shareholder does not elect to purchase the entire Pro-Rata portion of Offered Shares allocable to such Shareholder, the remaining Offered Shares shall be allocated Pro-Rata among the other electing Shareholders that have indicated in their notices that such Shareholders are willing to purchase more than their Pro-Rata portion had all of the Shareholders elected to exercise their right of first refusal in full.

7.5 Corporation May Assign Right To Purchase Remaining Shares. If the electing Shareholders do not elect to purchase all of the remaining Offered Shares under *Section 7.4*, the Corporation may assign the right to purchase the remaining Shares at the First Refusal Price to one or more Third Parties who agree to execute and be bound by the Shareholder Agreement (the "Assignees").

7.6 Remaining Shares May Be Sold To Purchaser Named In First Refusal Notice. The right of first refusal for the Offered Shares under *Section 7.1* must be exercised as to all of the Offered Shares. If all of the Offered Shares are not elected to be purchased by the Corporation under *Section 7.2*, the Shareholders under *Sections 7.3* and *7.4*, the Assignees under *Section 7.5*, all of the Offered Shares may be Disposed to the transferee named in the First Refusal Notice. Any such Disposition shall: (i) be made upon substantially the same terms and conditions described in the Disposing Shareholder's First Refusal Notice; (ii) be consummated within sixty (60) days after the expiration of the first refusal period granted herein to the other

Shareholders; and (iii) not be effective until such transferee executes the Shareholder Agreement and agrees to be bound by the terms thereof.

7.7 Remaining Shares Become Restricted If Not Sold To Purchaser Named In First Refusal Notice. If less than all of the Offered Shares are Disposed of under *Section 7.6*, the remaining Offered Shares shall again become restricted as though they had never been offered pursuant to this *Article VII*.

7.8 Closing of Redemption or Purchase. If all of the Offered Shares are redeemed and/or purchased by the Corporation under *Section 7.2*, the Shareholders under *Sections 7.3* and *7.4* and the Assignees under *Section 7.5*, all the Disposing Shareholder's Offered Shares shall be delivered at closing free and clear of all liens and encumbrances, other than any purchase money liens taken back by the Disposing Shareholder at the closing, if applicable. The closing thereof shall be held at the Corporation's principal office within thirty (30) days after the expiration of the first refusal period identified in *Article VII*.

ARTICLE VIII

CALL RIGHTS

8.1 Circumstances Under Which Corporation May Exercise Call Rights. The Corporation shall have the right to repurchase, at the Call Price, all or any portion of the Shares (including shares issuable upon exercise of vested options) of any Management Investor or any Permitted Transferees thereof if such Management Investor's employment with the Corporation or any Affiliate thereof is terminated by: (i) reason of such Management Investor's Disability or death; (ii) the Management Investor other than for Good Reason; or (iii) the Employer for Cause.

8.2 Period During Which Corporation May Exercise Call Rights. The Corporation may exercise such call rights within ninety (90) days after: (i) with respect to a Management Investor who has executed the Shareholder Agreement, the expiration of such Management Investor's put rights under *Section 8* of the Shareholder Agreement if such employment is terminated pursuant to *Section 8(a)(i)* therein; or (ii) termination of the Management Investor's employment if such termination is pursuant to *Sections 8.1(ii)* or *(iii)* herein.

8.3 Terms of Call Rights.

(a) **Purchase Price.** The purchase price of any Shares pursuant to a call right under this *Article VIII* shall be paid in cash unless prohibited by Applicable Law.

(b) **Closing.** A closing of each such purchase of Shares shall be held at the Corporation's principal office within thirty (30) days after delivery of a notice of the exercise of any call right under this *Article VIII*, at which the Shares shall be: (i) purchased by the Corporation in cash; and (ii) delivered by the Management Investor or Permitted Transferee thereof free and clear of all liens and encumbrances.

(c) **Prohibitions Against Payment In Cash.** If Applicable Law or any Debt Instrument prohibits the purchase of such Shares in cash (the "Prohibitions"), the purchase price shall be paid in cash only to the extent permitted by the Prohibitions and the remainder of such purchase price shall be paid by the Corporation's negotiable promissory note. Any such promissory note shall: (i) bear interest at the Prime Rate; (ii) have a maturity immediately following the termination or lapse of the applicable Prohibitions; (iii) be required to be repaid as to principal and/or interest as soon as permitted by the Prohibitions or simultaneously with any earlier refinancing of the Corporation's debt from any such repayment; and (iv) be secured by a pledge of and first lien on the repurchased Shares.

ARTICLE IX

DRAG-ALONG RIGHTS

9.1 In General. The Disposing Shareholders shall have the right to require each other Shareholder (a "Drag-Along Shareholder") to participate, Pro-Rata, in a sale of any class or series of Shares that will: (i) be sold to any one or more Third Parties; (ii) occur within a two-year period in one or more private transactions; and (iii) in the aggregate, represent more than fifty percent (50%) of the outstanding Shares on a fully diluted basis (the "Drag-Along Rights"). Each Drag-Along Shareholder's obligation to Dispose of Shares hereunder shall be for the same consideration per Share and otherwise on the same terms as the Disposing Shareholders.

9.2 Drag-Along Notice. The Disposing Shareholders shall give written notice exercising their Drag-Along Rights to the Corporation and the Drag-Along Shareholders at least twenty-five (25) days prior to the proposed Disposition ("Drag-Along Notice"). Each Drag-Along Notice shall set forth the particulars of the proposed Disposition to each Third Party and advise each Drag-Along Shareholder of its obligation to Dispose of Shares pursuant to the Drag-Along Rights.

9.3 Drag-Along Shareholders Must Dispose of Shares. After the Disposing Shareholder give the Drag-Along Notice, each Drag-Along Shareholder must sell the number of Shares representing such Drag-Along Shareholder's Pro-Rata portion of the Shares to be Disposed.

9.4 Drag-Along Shareholders Not Subject To Right Of First Refusal. A Drag-Along Shareholder that Disposes of Shares subject to the Drag-Along Rights shall not be subject to the requirements of *Article VII*.

ARTICLE X

DETERMINATION OF SHARE VALUE

10.1 Determination By Corporation And Interested Shareholders. The Determined Value shall be agreed upon by the Interested Shareholders and the Corporation within ten (10) days following the expiration of the notice period required to exercise any right hereunder.

10.2 Selecting An Experienced Firm. If the Corporation and the Interested Shareholders fail to agree upon the Determined Value within such time period, the Corporation shall promptly: (i) select an Experienced Firm; and (ii) notify the Interested Shareholders of such selection. The Interested Shareholders shall have ten (10) days after the receipt of such notice to accept the Corporation's Experienced Firm or to select another Experienced Firm.

10.3 Estimate If Interested Shareholders Accept Corporation's Experienced Firm. If the Interested Shareholders accept the Corporation's Experienced Firm: (i) the Experienced Firm shall promptly provide to the Corporation and the Interested Shareholder its estimate of the Determined Value; (ii) such estimate shall be the Determined Value; and (iii) the Corporation shall pay the fees charged by the Experienced Firm.

10.4 Estimate If Interested Shareholders Do Not Accept Corporation's Experienced Firm. If the Interested Shareholders do not accept the Corporation's Experienced Firm, an estimate of the Determined Value shall be submitted promptly by each of the Corporation's Experienced Firm and the Experienced Firm selected by a majority-in-interest of the Interested Shareholders. If the amount of the lower estimate is greater than or equal to ninety percent (90%) of the higher estimate, Determined Value shall be the average of the two estimates. If the amount of the lower estimate is less than ninety percent (90%) of the higher estimate, the two Experienced Firms shall select a third Experienced Firm, which shall select the estimate that is closest to such third Experienced Firm's estimate of the Determined Value. The third Experienced Firm's selected estimate shall be the Determined Value. Each of the Corporation and the Interested Shareholders shall pay the fees charged by the Experienced Firm selected by it or them. The Corporation and the Interested Shareholders shall share equally the fees charged by the third Experienced Firm.

10.5 Effective Date For Determined Value. The Determined Value shall be determined as of the last day of the month before: (i) the date of such Shareholder's termination of employment, if applicable; or (ii) if not applicable, the date on which the right to purchase or to require the purchase of the Shares arose. In no event shall the Determined Value reflect a discount for minority interests. The parties intend that the Determined Value per Share shall be equal to the Determined Value of the Corporation divided by the total number of Shares outstanding on a fully diluted basis.

ARTICLE XI

REMEDY FOR VIOLATION

11.1 Unauthorized Transfers Are Void. A Disposition of any Share in breach of any Disposition Restriction or other provision of these Articles of Incorporation shall be null and void and of no effect whatsoever.

11.2 Repurchase Or Redeem Shares If The Disposition Restrictions Are Held Invalid. The Corporation may redeem, and the Shareholders may purchase, any or all Shares that are Disposed of in violation of any Disposition Restriction that is held invalid.

11.3 Repurchase Price. The Corporation may redeem, and Shareholders may repurchase, such Shares at the: (i) price and on the terms on which such Shares were purchased by the holder thereof; or (ii) the Determined Value of such Shares.

11.4 Disposition Restriction Notice. The Corporation shall send prompt written notice to the Shareholders of any final judgment that holds any Disposition Restriction to be invalid (the "Disposition Restriction Notice").

11.5 Corporation Has 120 Days To Elect To Redeem Shares. The Corporation may elect to redeem any or all of such Shares by mailing written notice thereof to the holder of the Shares and the Shareholders within one hundred twenty (120) days after the date on which Disposition Restriction Notice was mailed.

11.6 Shareholders Have 60 Days To Elect To Purchase Shares. If the Corporation does not elect to redeem all of such Shares, each Shareholder may elect to purchase all or any part of such Shareholder's Pro-Rata portion of the remaining Shares by mailing written notice thereof to the holder of the Shares and the Corporation within sixty (60) days after the date on which Disposition Restriction Notice was mailed.

11.7 Third Parties May Buy Remaining Shares. If the other Shareholders do not elect to purchase all of the remaining Shares under *Section 11.6*, the Corporation may assign the right to purchase any or all of such remaining Shares to one or more Third Parties, *provided* that such Third Parties agree to execute and be bound by the terms of the Shareholder Agreement.

ARTICLE XII

CERTAIN RESTRICTIONS ON TRANSFER

12.1 Restrictions on Transfer. Except as otherwise provided herein (but subject in all cases to compliance with the provisions hereof), no holder of Shares of Capital Stock may, directly or indirectly, transfer any of its Shares of Capital Stock (or options, warrants or rights that may be here after issued to such holder) except as permitted under the Securities Act and other applicable securities laws.

12.2 Effectiveness of Transfers. To the extent that any transfer of Shares of Capital Stock is permitted hereunder and notwithstanding any provision herein to the contrary, no such transfer shall be effective unless such transfer is made (i) pursuant to an effective registration statement under the Securities Act and is qualified under applicable state securities or blue sky laws or (ii) without registration under the Securities Act and qualification under applicable state securities or blue sky laws, as a result of the availability of an exemption from registration and qualification under such laws, and such holder of Shares of Capital Stock shall have furnished to the Corporation a certificate or, if reasonably requested by the Corporation, an opinion of counsel, in either case reasonably satisfactory in form and substance to the Corporation and its counsel, to that effect.

12.3 Endorsement of Certificates. In addition to any other legend that the Corporation may deem advisable under the Securities Act and applicable state securities laws, all

certificates representing Shares of issued and outstanding Capital Stock shall be endorsed with a legend in substantially the following form:

THE STOCK REPRESENTED BY THIS CERTIFICATE IS HELD SUBJECT TO, AND CANNOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE PROVISIONS OF THE CORPORATION'S ARTICLES OF INCORPORATION AND THAT CERTAIN SECOND AMENDED AND RESTATED SHAREHOLDERS AGREEMENT, DATED AS OF OCTOBER 21, 2009, AND ANY AMENDMENTS THERETO, A COPY OF WHICH ON FILE IN THE OFFICE OF THE SECRETARY OF THE CORPORATION.

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF ANY JURISDICTION AND MUST BE HELD INDEFINITELY UNLESS THEY ARE TRANSFERRED EITHER PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS OR AFTER RECEIPT OF AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED AND THE TRANSFER DOES NOT VIOLATE ANY APPLICABLE SECURITIES LAWS.

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON REQUEST AND WITHOUT CHARGE A FULL STATEMENT OF THE DESIGNATIONS, PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS OF THE SHARES OF EACH CLASS OF STOCK AUTHORIZED TO BE ISSUED.

12.4 Improper Transfer. Any attempt to transfer or encumber any Shares of Capital Stock other than in accordance with the terms hereof or of the Shareholder Agreement shall be null and void *ab initio* and neither the Corporation nor any transfer agent of such securities shall give any effect to such attempted transfer or encumbrance in its stock records.

ARTICLE XIII

TAX WITHHOLDING

13.1 Tax Withholding. No later than the date as of which an amount first becomes includable in the gross income of a Management Investor for federal income tax purposes with respect to any Shares owned by such Management Investor, such Management Investor shall make arrangements reasonably satisfactory to the Corporation regarding the payment of any federal, state, local or foreign income taxes of any kind required by law to be withheld with respect to such amount. The obligations of the Corporation hereunder and under the Shareholder Agreement shall be conditioned on such arrangements, and the Corporation shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Management Investor.

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ARTICLE XIV

REGISTERED AGENT

14.1 **Name and Address.** The street address of the Corporation's registered office is 1200 S. Pine Island Road, Plantation, Florida 33324, and the name of the Corporation's registered agent at such address is CT Corporation System.

ARTICLE XV

BYLAWS

15.1 **Bylaws.** The Corporation's bylaws may be amended or repealed from time to time by either the Board or the shareholders, but the Board shall not alter, amend or repeal any bylaw adopted by the shareholders if the shareholders specifically provide that such bylaw is not subject to amendment or repeal by the Board.

ARTICLE XVI

INDEMNIFICATION

16.1 **Indemnification.** The Board is hereby specifically authorized to make provision for indemnification of directors, officers, employees and agents to the full extent permitted by law.

ARTICLE XVII

AMENDMENT

17.1 **Amendment.** This Corporation reserves the right to amend or repeal any provision contained in these Articles of Incorporation, and any right conferred upon the shareholders is subject to this reservation.

ARTICLE XVIII

NOTICE

18.1 **Notices.** Any and all notices, acceptances or any other communication provided for herein shall be given in writing by hand delivery, facsimile or other electronic transmission, overnight courier service or first class mail and shall be addressed, in the case of the Corporation, to its principal offices and in the case of any Shareholder, to his or her address appearing on the stock books of the Corporation or to his or her residence.

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ARTICLE XIX

DEFINITIONS

For purposes of these Articles of Incorporation, unless the context or use indicates another meaning or intent, the following capitalized terms shall have the meanings set forth below, whether used in the singular or the plural

"Applicable Law" means any and all applicable federal, state, local, municipal, foreign, international or multinational constitution, code, law, statute, ordinance, regulation, rule, standard, administrative ruling, principle of common law, legal doctrine, treaty or process applicable to a Person or its assets, liabilities, or business, including those promulgated, interpreted, or enforced by any regulatory authority, including, but not limited to, the Federal Trade Commission, the United States Department of Justice, the Board of the Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Internal Revenue Service, all state regulatory agencies having jurisdiction over the Corporation and/or any of its subsidiaries, the National Association of Securities Dealers, Inc., the United States Securities and Exchange Commission and the National Labor Relations Board.

"Affiliate" means with respect to any specified Person, any other Person directly or indirectly Controlling, Controlled, by or under common Control with such specified Person.

"Approval Date" means the date of any Board Approval.

"Approved Bank" means a federally insured depository institution that: (a) engages in business in Jacksonville, Florida or New York, New York; (b) possesses capital, surplus and undivided profits of at least one hundred and fifty million dollars (\$150,000,000); and (c) may, but need not, be the transfer agent and/or paying agent for the Series A Preferred Stock.

"Articles" means these Articles of Incorporation.

"Assignees" shall have the meaning set forth in *Section 7.5*.

"BHCA" shall have the meaning set forth in *Section 5.2*.

"Board" means the Board of Directors of EverBank Financial Corp.

"Board Approval" means an approval of a matter by the Board.

"Business Day" means each day of the calendar year other than a Saturday, Sunday or any other day on which banks are required or authorized to close in the State of Florida.

"Call Price" means the Determined Value of the Shares as to which call rights under *Article VIII* are exercised; *provided, however*, that in the event that a Management Investor's employment is terminated for Cause, the Call Price for Shares owned by such

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Management Investor and his or her Permitted Transferees shall be equal to the lesser of: (a) the "cost" to the Management Investor of such Shares; or (b) the Determined Value of such Shares. The "cost" to the Management Investor of his or her Shares shall be the amount paid for such Shares (or, in the case of Shares purchased upon exercise of options, the exercise price of such options). Except as otherwise provided herein, and notwithstanding any other provision provided herein, the Call Price of Shares issuable upon exercise of a vested option shall be equal to the Determined Value of the underlying shares, less the exercise price of such option, and the Call Price of Shares issuable upon conversion of a convertible security of the Corporation shall be equal to the Determined Value of the underlying shares, less the conversion price of such security.

"Cause" used in connection with the termination of employment of a Management Investor with the Corporation or any Affiliate shall mean (unless otherwise defined in an employment agreement between such Management Investor and the Corporation or any Affiliate, in which case, the term "Cause" as used herein with respect to such Management Investor shall have the meaning ascribed to it therein), the Management Investor's: (a) conviction of a felony (or a plea of nolo contendere thereto); (b) willful refusal to substantially perform his or her duties to his employer (other than as a result of Disability or illness or an absence approved by the Board of the Corporation); (c) willful engaging in misconduct that is materially injurious to his or her employer; or (d) willful use of or divulgence to any individual not employed on a full-time basis by the Corporation or any Affiliate, or to any other Person, except as necessary in the performance of his duties, any trade secret or confidential information which may be disclosed to him or her as a result of his or her employment with the Corporation or any Affiliate, unless such information becomes public through no fault of the Management Investor.

"Capital Stock" shall have the meaning set forth in *Section 4.1*.

"Common Stock" shall have the meaning set forth in *Section 4.3*.

"Common Stock Certificate" means a certificate issued by the Corporation representing shares of Common Stock.

"Common Stockholders" means the holders of record of Common Stock of the Corporation.

"Control," "Controlling" or "Controlled" means, when used with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

"Corporation" means EverBank Financial Corp and any successor thereto.

"Debt Instrument" means any loan document, credit agreement, security agreement, debt securities or other writing evidencing or securing indebtedness of the Corporation or any of its subsidiaries thereof.

"Determined Value" means the per Share value of the Shares as determined pursuant to *Article X*.

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"Disability" with respect to a Management Investor shall mean (unless otherwise used in an employment agreement between such Management Investor and the Corporation or any Affiliate, in which case, the term "Disability" as used herein with respect to such Management Investor shall have the meaning ascribed to it therein) such Management Investor having been absent from his employment duties to the employer on a full-time basis for the entire period of three (3) consecutive months, or any ninety (90) days within any six (6)-month period, as a result of the Management Investor's incapacity due to physical or mental illness.

"Dispose of" or "Disposition" means any lifetime transfer or assignment, whether voluntary or involuntary to another Person other than a Permitted Transferee, whether by sale, exchange, pledge, encumbrance, judicial attachment, contribution to a trust or other entity, or otherwise. **"Dispose of"** or **"Disposition"** shall not include: (a) a pledge of Shares to a responsible financial institution in the United States, as collateral security for a bona fide loan made by such financial institution, *provided* that such financial institution agrees in writing that any disposition of the pledged Shares for the account of the pledging Shareholder in the event of any default by such Shareholder shall be subject to the obligations imposed on such Shareholder by the Shareholder Agreement, including, but not limited to, the right of first refusal granted to the Corporation and the other Shareholders thereunder; or (b) a conversion of convertible Shares or any other securities of the Corporation into any other series or class of Shares.

"Disposing Shareholder" means a Shareholder who desires to Dispose of all or a part of the Shares owned by that Shareholder.

"Disposing Shareholder's First Refusal Notice" means the written notice mailed by a Disposing Shareholder to the Corporation and each other Shareholder that describes in adequate detail the terms and conditions offered by, and the identity of, a bona fide prospective purchaser, lender or other transferee to whom the Disposing Shareholder is considering Disposition of all or a part of the Disposing Shareholder's Shares, which notice shall include a complete copy of the written offer of such purchaser, lender or other transferee.

"Disposition Restriction" means any restriction on the Disposition of a Share under the terms of these Article of Incorporation or the Shareholder Agreement.

"Disposition Restriction Notice" shall have the meaning set forth in *Section 11.4*.

"Drag-Along Notice" shall have the meaning set forth in *Section 9.2*.

"Drag-Along Rights" shall have the meaning set forth in *Section 9.1*.

"Drag-Along Shareholder" shall have the meaning set forth in *Section 9.1*.

"Employer" with respect to a Management Investor, means the Corporation or any Affiliate thereof that employs such Management Investor.

"Experienced Firm" means a firm experienced in valuing the businesses in which the Corporation is then directly or indirectly engaged for purposes of calculating the Determined Value under *Article X*.

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"First Refusal Mailing Date" means the mailing date of a Disposing Shareholder's First Refusal Notice.

"First Refusal Price" means the price agreed upon between the seller and the party or parties electing to exercise a right of first refusal under the terms hereof. In the absence of an agreed upon price, the term shall mean a purchase or redemption on terms and conditions substantially the same as those described in the First Refusal Notice of the Disposing Shareholder or the Corporation, as the case may be, which is given to the other parties hereto in accordance with the terms of *Article VII*. In the event such notice describes terms and conditions that are unique to a proposed transaction and cannot readily be assumed by other parties (e.g., an exchange of Shares in return for property or services, and in the absence of an agreed-upon price, the First Refusal Price shall be the Determined Value).

"Good Reason" means (unless otherwise defined in an employment agreement between the Management Investor and the Corporation or any Affiliate, in which case the term "Good Reason" as used herein shall have the meaning ascribed to it therein): (a) a material reduction of the Management Investor's salary or benefits; or (b) the removal of the Management Investor from, or assignment to the Management Investor of any duties or responsibilities substantially inconsistent with his or her office, or a substantial diminution in the nature or status of the Management Investor's duties or responsibilities.

"Initial Public Offering" shall mean the completion of an underwritten public offering of shares of Common Stock pursuant to an effective registration statement filed pursuant to the Securities Act, which results in the trading of such securities on the New York Stock Exchange, the NASDAQ Stock Market or other national securities exchange.

"Interested Shareholder" means a Shareholder that is acquiring or Disposing of Shares for which the Determined Value is being established under *Article X*.

"Issuance Price" means the issuance price for any share of Common Stock or Preferred Stock.

"Issue Date" means the date on which the Corporation issues a share of Common Stock or Preferred Stock.

"Management Investor" means a Shareholder who is an employee of the Corporation or any Affiliate of the Corporation. Where a Management Investor has transferred any Shares to a Permitted Transferee, such individual shall nevertheless continue to be deemed a Management Investor hereunder as long as he or she continues to be an employee of the Corporation or any Affiliate of the Corporation.

"Nonvoting Common Stock" shall have the meaning set forth in *Section 4.3*.

"Offered Shares" shall have the meaning set forth in *Section 7.1*.

"OTS" means the Office of Thrift Supervision.

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"Permitted Transferee" means: (a) upon the death of a Shareholder his or her executors, administrators, testamentary trustees, heirs, devisees or other similar Persons pursuant to applicable laws of descent and distribution; (b) upon an inter vivos transfer of Shares made in compliance with all applicable federal and state securities laws, the Shareholder's spouse, parents, parents-in-law, children or grandchildren (collectively, **"Family Members"**), or a corporation, limited liability company, partnership, trust or similar entity, the direct or indirect stockholders, members, limited and general partners and beneficiaries of which consist only of the Shareholder and/or one or more Family Members of such Shareholder, including any subsequent transfer between entities the equity owners (or in the case of a trust, the beneficiaries of which) consist of one or more of such Family Members; (c) the direct or indirect equity owners of a Shareholder that is an entity (or in the case of a trust, the beneficiaries of the trust); (d) a Person who is an Affiliate of the Shareholder in question (or in the case of a trust, another trust having the same beneficiaries as the Shareholder); or (e) with the consent of the Board of the Corporation, which may be withheld in its sole discretion, any Person that is affiliated with the Shareholder in question even though such Person does not meet the definition of an Affiliate; *provided, however*, that no Person shall become a "Permitted Transferee" without first agreeing to be bound by the terms of the Shareholder Agreement in a manner satisfactory to the Board.

"Person" means any individual, corporation, association, partnership (general or limited), bank, savings association, joint venture, trust, estate, limited liability company or other legal entity or organization.

"Preferred Stock" shall have the meaning set forth in *Section 4.2*.

"Prime Rate" means the interest rate announced as its prime rate from time to time by Bank of New York (or any successor), or any other lender to the Corporation or any of its subsidiaries, as selected by the Board in its discretion, which Prime Rate shall be adjusted as of the first day of each calendar quarter and shall remain in effect for such quarter.

"Pro Rata" With respect to any right to acquire Shares hereunder, "Pro-Rata" means pro rata as to each class or series of Shares based upon the aggregate number of Shares owned by those Shareholders who shall duly exercise their option to acquire any of such class or series of Shares offered hereunder. By way of example only, if two Shareholders each held ten percent (10%) of the Corporation's aggregate Shares and were the only Shareholders who elected to exercise their right of first refusal hereunder, each Shareholder would have the right to purchase fifty percent (50%) of the Shares available for purchase in each class or series thereof.

"Prohibitions" shall have the meaning set forth in *Section 8.3(c)*.

"Securities Act" means the Securities Act of 1933, as amended.

"Shareholder" means those Persons holding Shares from time to time.

"Shareholder Agreement" means the Amended and Restated Stock Redemption and Shareholder's Agreement dated on or about October 21, 2009 between the Corporation and the shareholders thereof, as amended from time to time.

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"Shares" means those shares of Capital Stock of the Corporation now issued and outstanding or hereafter issued or reissued and outstanding.

"Third Party" means a Person who is not, and following a sale of Shares will not be, an Affiliate of any Shareholder.

"Voting Common Stock" shall have the meaning set forth in *Section 4.3*.

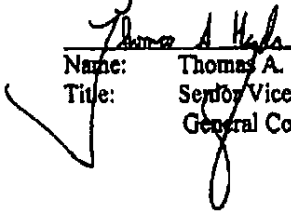
To: FL Dept. of State
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From: Katie Wonsch

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IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Incorporation the 29th day of January, 2010.


Name: Thomas A. Hajda
Title: Senior Vice President and General Counsel

Signature Page to Amended and Restated Articles of Incorporation

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ACCEPTANCE BY REGISTERED AGENT

Having been named to accept service of process for the above stated Corporation, at the place designated in the above Articles of Incorporation, CT Corporation System hereby agrees to act in this capacity, and further agrees to comply with the provisions of all statutes relative to the proper and complete performance of my duties. CT Corporation System is familiar with and accepts the obligations of a registered agent.

CT CORPORATION SYSTEM

By: 

Name:

Title:

Madonna Cuddihy
Special Assistant Secretary

Date: January 29, 2010.

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