

Jan. 11, 2008

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PO5000127693

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**AMENDMENT NO. 1
TO
AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
REAL MORTGAGE SYSTEMS, INC.**

**DESIGNATION OF
POWERS, PREFERENCES AND RIGHTS OF
8% SERIES D CUMULATIVE CONVERTIBLE PREFERRED STOCK,
PAR VALUE \$0.001 PER SHARE**

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Real Mortgage Systems, Inc., a Florida corporation (the "Corporation") organized and existing under the Florida Business Corporations Act, Chapter 607, Florida Statutes (2005), as amended ("FBCA") hereby certifies as follows:

1. On September 15, 2005, Articles of Incorporation for the Corporation were originally filed with the Secretary of State of the State of Florida. The corporation was assigned document number P05000127693.
2. On August 2, 2006, Amended and Restated Articles of the Incorporation were filed with the Secretary of State of the State of Florida.
3. On September 28, 2006, Amendment No. 1 to Amended and Restated Articles of Incorporation were filed with the Secretary of State of the State of Florida.
4. On February 20, 2007, Amendment No. 2 to Amended and Restated Articles of Incorporation were filed with the Secretary of State of the State of Florida.
5. On September 25, 2007, Amendment No. 3 to Amended and Restated Articles of Incorporation was filed with the Secretary of State of the State of Florida.
6. On November 6, 2007, Amended and Restated Articles of Incorporation were filed with the Secretary of State of the State of Florida.
7. The Amended and Restated Articles of Incorporation of the Corporation are hereby further amended to read as provided below.
8. The Amended and Restated Articles of Incorporation of the Corporation authorize the issuance of 50,000,000 shares of preferred stock, par value \$0.0001 per share, and expressly vest in the Board of Directors of the Corporation (the "Board") the authority to issue any or all of such shares in one or more series by resolution, to establish from time to time the number of shares to be included in such series and to fix the designations, powers, preferences and rights of

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the shares of each such series and the qualifications, limitations or restrictions of each series to be issued.

9. The Board, pursuant to the authority expressly vested in it pursuant to the Amended and Restated Articles of Incorporation, adopted a resolution to create a series of preferred stock to be designated as "8% Series D Cumulative Convertible Preferred Stock" and to fix the designation, powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations and restrictions thereof, as provided herein.

10. Pursuant to the FBCA the following is adopted as Amendment No. 1 to the Amended and Restated Articles of Incorporation of the Corporation:

Article V of the Amended and Restated Articles of Incorporation of the Corporation is amended and restated in its entirety to read as follows:

ARTICLE V
CAPITAL STOCK

1. Authorized Capital. The Corporation shall have authority to issue 150,000,000 shares of capital stock of which 70,000,000 shares shall be voting common stock, par value \$.0001 per share ("Voting Common Stock"), 30,000,000 shares shall be non-voting common stock, par value \$.0001 per share ("Non-voting Common Stock" and collectively with the Voting Common Stock shall be referred to as the "Common Stock") and 50,000,000 shares shall be preferred stock, par value \$.0001 per share, of which 1,000,000 shares shall be designated as "8% Series A Cumulative Convertible Preferred Stock" with the rights and preferences provided herein (the "Series A Preferred Stock"), 10,000,000 shares shall be designated as "8% Series B Cumulative Convertible Preferred Stock" with the rights and preferences provided herein (the "Series B Preferred Stock"), 10,000,000 shares shall be designated as "8% Series C Cumulative Convertible Preferred Stock" with the rights and preferences provided herein (the "Series C Preferred Stock"), 4,000,000 shares shall be designated as "8% Series D Cumulative Convertible Preferred Stock" with the rights and preferences provided herein (the "Series D Preferred Stock") and 25,000,000 shares shall be available for issuance and designation by the Board as provided herein (the "Authorized Preferred Stock" and collectively with the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock, the "Preferred Stock").

2. Voting Common Stock.

(a) Identical Rights. Except as otherwise provided herein, all shares of Voting Common Stock shall be identical and shall entitle the holders thereof to the same rights and privileges.

(b) Relative Rights of Voting Common Stock and Non-voting Common Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions, of the Voting Common Stock and the Non-voting Common Stock are expressly made *pari passu* to each other except with respect to voting and conversion rights, as set forth herein.

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(c) Relative Rights of Preferred Stock and Voting Common Stock. All preferences, voting powers, dividend, liquidation, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Voting Common Stock are expressly made subject and subordinate to and qualified by the rights, powers and preferences of the Preferred Stock set forth herein.

(d) Voting Rights. Except as otherwise required by law or as otherwise provided herein, on all matters submitted to the Corporation's shareholders generally, the holders of Voting Common Stock shall be entitled to one vote per share held at all meetings of shareholders (and written actions in lieu of meetings).

(e) Dividends. When and as dividends or other distributions are declared, whether payable in cash, in property or in securities of the Corporation, the holders of shares of Common Stock shall be entitled to share equally, share for share, in such dividends or other distributions, provided that if dividends or other distributions are declared which are payable in shares of Voting Common Stock, such dividends or other distributions shall be declared payable at the same rate for all holders of Common Stock. Notwithstanding the foregoing, so long as any shares of Preferred Stock are outstanding, no dividends or distributions (including redemptions) may be paid on the Common Stock unless all dividends on such Preferred Stock shall have been paid.

(f) Conversion. The holders of shares of Voting Common Stock shall not have any rights to convert such shares into shares of any other class or series of capital stock of the Corporation.

(g) Redemption. Holders of Voting Common Stock have no redemption or preemptive rights and are not liable for calls or assessments.

(h) Liquidation Rights. In the event of any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, subject to the prior payment in full of all liabilities of the Corporation and any liquidation preference of shares of Preferred Stock, the holders of shares of Common Stock shall be entitled to share, equally and ratably among all holders of Common Stock, in all remaining assets after payment of such liabilities and preferences. Neither the sale of all or substantially all the property or business of the Corporation, nor the merger or consolidation of the Corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the Corporation, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purpose of this paragraph (h).

3. Non-voting Common Stock.

(a) Identical Rights. Except as otherwise provided herein, all shares of Non-voting Common Stock shall be identical and shall entitle the holders thereof to the same rights and privileges.

(b) Relative Rights of Voting Common Stock and Non-voting Common Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Voting Common Stock and the Non-voting

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Common Stock are expressly made *pari passu* to each other except with respect to voting and conversion rights.

(c) Relative Rights of Preferred Stock and Non-voting Common Stock. All preferences, voting powers, dividend, liquidation, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions, of the Non-voting Common Stock are expressly made subject and subordinate to and qualified by the rights, powers and preferences of the Preferred Stock set forth herein.

(d) Voting Rights. Except as otherwise required by law or as otherwise provided herein, on all matters submitted to the Corporation's shareholders generally, the holders of Non-voting Common Stock shall not be entitled to vote.

(e) Dividends. When, as and if dividends or other distributions are declared by the Board, whether payable in cash, in property or in securities of the Corporation, the holders of shares of Common Stock shall be entitled to share equally, share for share, in such dividends or other distributions, provided that if dividends or other distributions are declared which are payable in shares of Voting Common Stock, such dividends or other distributions shall be declared payable at the same rate for all holders of Common Stock. Notwithstanding the foregoing, so long as any shares of Preferred Stock are outstanding, no dividends or distributions (including redemptions) may be paid on the Common Stock unless all dividends on such Preferred Stock shall have been paid.

(f) Conversion. The Corporation shall cause all of the outstanding shares of Non-Voting Common Stock to be converted into shares of Voting Common Stock on the earlier to occur of: (i) the closing of any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event or sale of all or substantially all of the Corporation's assets; except any such merger or consolidation involving the Corporation in which the holders of voting capital stock of the Corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation at least 50% of the voting power of the capital stock of the surviving or resulting corporation; or (ii) the effective date of the registration statement filed by the Corporation under the Securities Act of 1933, as amended for an initial public offering of shares of Voting Common Stock. Each share of Non-voting Common Stock shall be, on the happening of the above listed events, converted into one share of Voting Common Stock. The Corporation shall notify each holder of Non-voting Common Stock of the happening of any such event and after the receipt of such notice, each holder of Non-voting Common Stock shall surrender to the Corporation the duly endorsed certificate evidencing the shares of Non-voting Common Stock owned by such holder. The Corporation shall, as soon as practicable after receipt of such certificate, issue and deliver to such holder a certificate evidencing the number of shares of Voting Common Stock to which such holder shall be entitled.

(g) Redemption. Holders of Non-voting Common Stock have no redemption or preemptive rights and are not liable for calls or assessments, but may be subject to redemption under the terms of separate agreements.

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(h) Liquidation Rights. In the event of any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, subject to the prior payment in full of all liabilities of the Corporation and any liquidation preference of shares of Preferred Stock, the holders of shares of Common Stock shall be entitled to share, equally and ratably among all holders of Common Stock, in all remaining assets after payment of such liabilities and preferences. Neither the sale of all or substantially all the property or business of the Corporation, nor the merger or consolidation of the Corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the Corporation, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purpose of this paragraph (h).

4. Series A Preferred Stock.

(a) Designation and Amount. 1,000,000 shares of the 50,000,000 authorized shares of Preferred Stock are designated as shares of "8% Series A Cumulative Convertible Preferred Stock" (the "Series A Preferred Stock").

(b) Relative Rights of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions, of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock are expressly made *pari passu* to each other except with respect to voting rights in which case on all matters submitted to the Corporation's shareholders the holders of the Preferred Stock shall have the voting rights established herein.

(c) Voting Rights. Except as provided in this Section, the holders of record of the shares of Series A Preferred Stock (the "Series A Holders") shall have no voting power whatsoever except to the extent otherwise expressly provided by the FBCA, and no Series A Holder shall vote or otherwise participate in any proceeding in which actions shall be taken by the Corporation or the shareholders thereof or be entitled to notification as to any meeting of the shareholders. The Series A Holders shall have the right to vote the shares of Series A Preferred Stock as one class together on the election of one individual as a member of the Board of Directors of the Corporation as more specifically provided in a definite voting agreement entered into among the Corporation and Series A Holders.

(d) Dividends.

(i) The Series A Holders shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation (the "Board"), out of legally available funds therefor, cumulative dividends accruing on the Series A Preferred Stock at a rate equal to 8% of the Series A Original Issue Price (as defined below) per annum per share (the "Series A Dividend Rate"), payable quarterly in arrears in cash. The "Series A Original Issue Price" shall mean the price at which shares of Series A Preferred Stock were originally issued, subject to appropriate adjustment as set forth herein.

(ii) All dividends shall accrue on any given share of Series A Preferred Stock from the most recent date on which a dividend has been paid with respect to such share of Series

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A Preferred Stock or, if no dividends have been paid, from the date of original issuance of such share of Series A Preferred Stock ("Series A Original Issue Date"). All dividends shall accrue from day to day, whether or not declared, based on the actual number of days elapsed and shall be payable quarterly in arrears on January 1, April 1, July 1 and October 1 of each year (each a "Dividend Payment Date"), commencing on the Series A Original Issue Date; provided, that if a Dividend Payment Date is not a business day, then the dividend shall be payable on the first immediately succeeding business day. Dividends shall be paid to the holders of record of the shares of Series A Preferred Stock as their names appear on the stock transfer records of the Corporation on the date (the "Record Date") designated by the Board as the date of record for the payment of such dividend; and, further provided, that such Record Date may not precede the date upon which the resolution fixing the Record Date is adopted and may not be more than sixty (60) days prior to the Dividend Payment Date.

(iii) No dividends may be paid or set apart for such payment on any shares of Common Stock and no Common Stock may be repurchased or otherwise retired for value nor may funds be set apart for payment with respect thereto, if dividends have not been paid in full on the Preferred Stock as provided in this Article.

(e) Rank. The Series A Preferred Stock shall rank senior to all shares of Common Stock and *pari passu* with all shares of Series B Preferred Stock and Series C Preferred Stock, as to any distribution of assets upon any liquidation, dissolution or winding up of this corporation, whether voluntary or involuntary (all such distributions being referred to collectively as "Distributions").

(f) Liquidation Preference.

(i) If any Distribution, occurs, the Series A Holders shall be entitled to receive, prior and in preference to any Distribution to the holders of the Common Stock and *pari passu* with all shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, an amount per share equal to the greater of (A) the Series A Original Issue Price, together with unpaid and accrued dividends (whether or not earned or declared) on the Series A Preferred Stock, and (B) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock pursuant to paragraph (g), below, immediately prior to such Distribution. If upon any such Distribution, and after payment in full of any amounts due the creditors of the Corporation, the assets available to be distributed to the holders of Preferred Stock shall be insufficient to pay to the holders of Preferred Stock the full preferential amounts due to the holders of Preferred Stock, then the entire assets of the Corporation legally available for distribution shall be distributed among the holders of Preferred Stock pro rata.

(ii) Upon the completion of the Distribution to the holders of Preferred Stock as required, if assets remain in the Corporation, they shall be distributed to holders of Common Stock, pro rata based on the number of shares held by each holder of Common Stock.

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(g) Conversion Rights.

(i) Mandatory Conversion by Corporation. The Corporation shall cause all of the outstanding shares of Series A Preferred Stock to be converted into shares of Voting Common Stock at any time if: (A) there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event or there occurs a sale of all or substantially all of the Corporation's assets; or (B) the Corporation conducts an initial public offering of shares of Voting Common Stock at a price per share greater than the Series A Original Issue Price. Each outstanding share of Series A Preferred Stock shall be, on the happening of the above listed events, subject to conversion into shares of Voting Common Stock at the then effective Series A Conversion Value, as defined below. The Corporation shall give thirty (30) days notice of its intent to convert in accordance with this Section. After the receipt of such notice, each Series A Holder shall surrender to the Corporation the duly endorsed certificate evidencing the shares of Series A Preferred Stock owned by such holder (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate). The Corporation shall, as soon as practicable after receipt of such certificate, issue and deliver to such holder a certificate evidencing the number of shares of Voting Common Stock to which such holder shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Voting Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on such date.

(ii) Optional Conversion by Series A Holders. The Series A Holders may, at their option, cause the Corporation to convert their shares of Series A Preferred Stock into shares of Voting Common Stock as follows:

(A) Right to Convert. At any time after the fifth anniversary of the date of issuance of shares of Series A Preferred Stock, each share of Series A Preferred Stock shall be convertible into shares of Voting Common Stock by the Corporation, without the payment of any additional consideration, at the option of the Series A Holder thereof, into the number of fully paid and nonassessable shares of Voting Common Stock which results from dividing the Series A Original Issue Price by the Series A Conversion Value, as defined below, at the time of conversion. The "Series A Conversion Value" shall initially be equal to an amount equal to the Series A Original Issue Price and shall be subject to adjustment from time to time as provided herein.

(B) Mechanics of Conversion. Before any Series A Holder shall be entitled to voluntarily convert shares of Series A Preferred Stock into shares of Voting Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), duly endorsed, to the Corporation at the offices of the Corporation, together with written notice

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to the Corporation at such office that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Voting Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted (the "Series A Conversion Time"), and the person entitled to receive the shares of Voting Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on such date. The Corporation shall, as soon as practicable after the Conversion Time, (1) issue and deliver to such holder of Series A Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series A Preferred Stock represented by the surrendered certificate that were not converted into Voting Common Stock, (2) pay in cash such amount as provided in subsection (iii), below, in lieu of any fraction of a share of Voting Common Stock otherwise issuable upon such conversion and (3) pay all declared but unpaid dividends on the shares of Series A Preferred Stock converted.

(iii) Fractional Shares. No fractional shares of Voting Common Stock shall be issued upon conversion of shares of Series A Preferred Stock, but the number of shares of Voting Common Stock shall be rounded down to the nearest whole number. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Voting Common Stock as determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Voting Common Stock and the aggregate number of shares of Voting Common Stock issuable upon such conversion.

(iv) Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Voting Common Stock upon conversion of shares of Series A Preferred Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involving the issuance and delivery of shares of Voting Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(v) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued shares of Voting Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock, such number of shares of its duly authorized shares of Voting Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock. If at any time the number

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of authorized but unissued shares of Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Value below the then par value of the shares of Voting Common Stock issuable upon conversion of the shares of Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Voting Common Stock at such adjusted Series A Conversion Value.

(h) Adjustments to Series A Conversion Value.

(i) No Adjustment of Conversion Value. No adjustment in the Series A Conversion Value shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued by the Corporation is less than the Series A Conversion Value in effect on the date of, and immediately prior to, such issue. "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the Series A Original Issue Date, other than shares of Common Stock issued or issuable:

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

(B) to officers, directors or employees of, or financial advisors or other consultants to, the Corporation pursuant to a written stock grant, option plan or purchase plan or other employee stock incentive program (a "Plan") or pursuant to any acquisition, financing or other written agreement so long as any such Plan or written agreement has been approved by the Board; or

(C) as a dividend or distribution on the Common Stock or the Preferred Stock.

(ii) Deemed Issuance of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Series A Original Issue Date shall issue any rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Preferred Stock ("Options") or any evidences of indebtedness, shares (other than Common Stock or Preferred Stock) or other securities convertible into or exchangeable for Common Stock ("Convertible Securities") then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue provided, that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share of such Additional Shares of Common Stock would be less than the Series A Conversion Value in effect on the date of and immediately prior to such

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issue, and provided, further, that in any case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Series A Conversion Value shall be made upon the subsequent issue of shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or any increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Value computed upon the original issue of such Options or Convertible Securities and any subsequent adjustments based thereon shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; and

(C) on the expiration or cancellation of any Options or the termination of the right to convert or exchange any Convertible Securities which shall have not been exercised, if the Series A Conversion Value shall have been adjusted upon the original issuance of such Options or Convertible Securities or shall have been subsequently adjusted pursuant to clause (B) above, the Series A Conversion Value shall be recomputed as if the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issuance of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, if any, or for the issuance of all such Convertible Securities, whether or not actually converted or exchanged, plus the consideration actually received by the Corporation upon such conversion or exchange, if any.

(iii) Adjustment of Series A Conversion Value Upon Issuance of Additional Shares of Common Stock. If the Corporation shall issue Additional Shares of Common Stock without consideration or for a consideration per share less than the Series A Conversion Value in effect on the date of and immediately prior to such issuance, then and in such event, the Series A Conversion Value shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one cent) determined by dividing (A) an amount equal to the sum of (w) the number of shares of Common Stock outstanding immediately prior to such issue (determined on a fully-diluted basis; i.e., treating as issued and outstanding all shares of Common Stock issuable upon exercise, exchange or conversion of all outstanding options (to the extent then vested or exercisable), warrants or other securities exercisable or exchangeable for or convertible into, directly or indirectly, shares of Common Stock) multiplied by the then existing Series A Conversion Value, plus (x) the consideration, if any, received by the Corporation (or deemed to have been received by this Corporation) upon such issue of Additional Shares of Common Stock, by (B) the sum of (y) the number of shares of the Corporation's issued and outstanding Common Stock on a fully-diluted basis immediately before the issuance of such Additional Shares of Common Stock and (z) the number of shares of Additional Shares of Common Stock that were issued (or deemed to have been issued) in the transaction to which this Section applies. Notwithstanding the foregoing provisions of this Section, if the operation of the foregoing

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provisions shall result in a new Series A Conversion Value which is less than or equal to the price paid or deemed to have been paid for such Additional Shares of Common Stock (the "Additional Shares Issue Price"), then the new Series A Conversion Value shall be the amount which is \$0.001 more than the Additional Shares Issue Price. If such Additional Shares of Common Stock are issued for no consideration, then the Additional Shares Issue Price shall be deemed to be \$0.001.

(iv) Adjustment to the Conversion Rate due to Stock Split, Stock Dividend or Other Similar Event. If, prior to the conversion of all the shares of Series A Preferred Stock, the number of outstanding shares of Common Stock is increased by a stock split, stock dividend or other similar event, the Series A Conversion Value shall be proportionately reduced, or if the number of outstanding shares of Common Stock is decreased by a combination or reclassification of shares, or other similar event, the Series A Conversion Value shall be proportionately increased.

(v) Adjustment Due to Consolidation, Merger, Exchange of Shares, Recapitalization, Reorganization or Other Similar Event. If, prior to the conversion of all the shares of Series A Preferred Stock, (A) there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event, as a result of which shares of Common Stock of this corporation shall be changed into the same or a different number of shares of the same or another class or classes of stock or securities of this corporation or another entity, or (B) there occurs a sale of all or substantially all of the Corporation's assets that is not deemed to be a liquidation, dissolution or winding up of this corporation, then the Series A Holders thereafter shall have the right to receive upon conversion of the shares of Series A Preferred Stock held by them, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore issuable upon conversion, such stock, securities and/or other assets which the Series A Holders would have been entitled to receive in such transaction had the Series A Preferred Stock, together with all unpaid and accrued dividends thereon (whether or not earned or declared), been converted immediately prior to such transaction, and in any such case appropriate provisions shall be made with respect to the rights and interests of the Series A Holders to the end that the provisions hereof (including, without limitation, provisions for the adjustment of the Series A Conversion Value) shall thereafter be applicable, as nearly as may be practicable in relation to any securities thereafter deliverable upon the exercise hereof.

(vi) Certificates as to Adjustments. Upon each adjustment or readjustment of the Series A Conversion Value, the Corporation, at its expense, promptly shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate of the Corporation setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustments and readjustments, (B) the then effective Series A Conversion Value, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of such Series A Preferred Stock.

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(i) Protective Provisions. So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by the FBCA) of a majority of the Series A Holders:

(i) alter or change the rights, preferences or privileges of the Series A Preferred Stock, including, but not limited to, the creation or authorization of securities which rank senior to the Series A Preferred Stock;

(ii) increase the size of the authorized number of shares of Series A Preferred Stock; or

(iii) do any act or thing not authorized or contemplated by the Articles of Incorporation which would result in taxation of the Series A Holders under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended).

5. Series B Preferred Stock

(a) Designation and Amount. 10,000,000 shares of the 50,000,000 authorized shares of Preferred Stock are designated as shares of "8% Series B Cumulative Convertible Preferred Stock" (the "Series B Preferred Stock").

(b) Relative Rights of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions, of the Series A Preferred Stock, the Series B Preferred Stock, Series C Preferred Stock and the Series D Preferred Stock are expressly made *pari passu* to each other except with respect to voting rights in which case on all matters submitted to the Corporation's shareholders the holders of the Preferred Stock shall have the voting rights established herein.

(c) Voting Rights. Except as provided in this Section, the holders of record of the Series B Preferred Stock (the "Series B Holders") shall have no voting power whatsoever except to the extent otherwise expressly provided by the FBCA, and no Series B Holder shall vote or otherwise participate in any proceeding in which actions shall be taken by the Corporation or the shareholders thereof or be entitled to notification as to any meeting of the shareholders. The Series B Holders shall have the right to vote the shares of Series B Preferred Stock as one class together on the election of one individual as a member of the Board as more specifically provided in a definite voting agreement entered into among the Corporation and Series B Holders.

(d) Dividends.

(i) The Series B Holders shall be entitled to receive, when, as and if declared by the Board, out of legally available funds therefor, cumulative dividends accruing on the Series B Preferred Stock at a rate equal to 8% of the Series B Original Issue Price (as defined below) per annum per share (the "Series B Dividend Rate"), payable quarterly in arrears in cash. The "Series B Original Issue Price" shall mean the price at which shares of Series B Preferred Stock were originally issued, subject to appropriate adjustment as set forth herein.

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(ii) All dividends shall accrue on any given share of Series B Preferred Stock from the most recent date on which a dividend has been paid with respect to such share of Series B Preferred Stock or, if no dividends have been paid, from the date of original issuance of such share of Series B Preferred Stock ("Series B Original Issue Date"). All dividends shall accrue from day to day, whether or not declared, based on the actual number of days elapsed and shall be payable quarterly in arrears on January 1, April 1, July 1 and October 1 of each year (each a "Dividend Payment Date") commencing on the Series B Original Issue Date, provided, that if a Dividend Payment Date is not a business day, then the dividend shall be payable on the first immediately succeeding business day. Dividends shall be paid to the holders of record of the Series B Preferred Stock as their names appear on the stock transfer records of the Corporation on the date (the "Record Date") designated by the Board as the date of record for the payment of such dividend; and, further provided, that such Record Date may not precede the date upon which the resolution fixing the Record Date is adopted and may not be more than sixty (60) days prior to the Dividend Payment Date.

(iii) No dividends may be paid or set apart for such payment on any shares of Common Stock and no Common Stock may be repurchased or otherwise retired for value nor may funds be set apart for payment with respect thereto, *if dividends have not been paid in full on the Preferred Stock as provided in this Article.*

(c) Rank. The Series B Preferred Stock shall rank senior to all shares of Common Stock and *pari passu* with all shares of Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, as to any distribution of assets upon any liquidation, dissolution or winding up of this corporation, whether voluntary or involuntary (all such distributions being referred to collectively as "Distributions").

(f) Liquidation Preference.

(i) If any Distribution, occurs, the Series B Holders shall be entitled to receive, prior and in preference to any Distribution to the holders of the Common Stock and *pari passu* with all shares of Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, an amount per share equal to the greater of (A) the Series B Original Issue Price, together with unpaid and accrued dividends (whether or not earned or declared) on the Series B Preferred Stock, and (B) such amount per share as would have been payable had all shares of Series B Preferred Stock been converted into Common Stock pursuant to paragraph (g), below, immediately prior to such Distribution. If upon any such Distribution, and after payment in full of any amounts due the creditors of the Corporation, the assets available to be distributed to the holders of Preferred Stock shall be insufficient to pay to the holders of Preferred Stock the full preferential amounts due to the holders of Preferred Stock, then the entire assets of the Corporation legally available for distribution shall be distributed among the holders of Preferred Stock pro rata.

(ii) Upon the completion of the Distribution to the holders of Preferred Stock as required, if assets remain in the Corporation, they shall be distributed to holders of Common Stock, pro rata based on the number of shares held by each holder of Common Stock.

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(g) Conversion Rights.

(i) Mandatory Conversion by Corporation. The Corporation shall cause all of the outstanding shares of Series B Preferred Stock to be converted into shares of Voting Common Stock at any time if: (A) there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event or there occurs a sale of all or substantially all of the Corporation's assets; or (B) the Corporation conducts an initial public offering of shares of Voting Common Stock at a price per share greater than the Series B Original Issue Price. Each outstanding share of Series B Preferred Stock shall be, on the happening of the above listed events, subject to conversion into shares of Voting Common Stock at the then effective Series B Conversion Value, as defined below. The Corporation shall give thirty (30) days notice of its intent to convert in accordance with this Section. After the receipt of such notice, each Series B Holder shall surrender to the Corporation the duly endorsed certificate evidencing the shares of Series B Preferred Stock owned by such holder (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate). The Corporation shall, as soon as practicable after receipt of such certificate, issue and deliver to such holder a certificate evidencing the number of shares of Voting Common Stock to which such holder shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Voting Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on such date.

(ii) Mechanics of Conversion. Before any Series B Holder shall be entitled to convert shares of Series B Preferred Stock into shares of Voting Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates for such shares of Series B Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), duly endorsed, to the Corporation at the offices of the Corporation, together with written notice to the Corporation at such office that such holder elects to convert all or any number of the shares of the Series B Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Voting Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. 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 (the "Series B Conversion Time"), and the person entitled to receive the shares of Voting Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on such date. The Corporation shall, as soon as practicable after the Series B Conversion Time, (A) issue and deliver to such holder of Series B Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full

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shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series B Preferred Stock represented by the surrendered certificate that were not converted into Voting Common Stock, (B) pay in cash such amount as provided in Subsection (iii), below, in lieu of any fraction of a share of Voting Common Stock otherwise issuable upon such conversion and (C) pay all accrued but unpaid dividends on the shares of Series B Preferred Stock converted.

(iii) Fractional Shares. No fractional shares of Voting Common Stock shall be issued upon conversion of shares of Series B Preferred Stock, but the number of shares of Voting Common Stock shall be rounded down to the nearest whole number. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Voting Common Stock as determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series B Preferred Stock the holder is at the time converting into Voting Common Stock and the aggregate number of shares of Voting Common Stock issuable upon such conversion.

(iv) Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Voting Common Stock upon conversion of shares of Series B Preferred Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involving the issuance and delivery of shares of Voting Common Stock in a name other than that in which the shares of Series B Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(v) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times when the Series B Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued shares of Voting Common Stock, solely for the purpose of effecting the conversion of the shares of Series B Preferred Stock, such number of shares of its duly authorized shares of Voting Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series B Preferred Stock. If at any time the number of authorized but unissued shares of Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series B Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation. Before taking any action which would cause an adjustment reducing the Series B Conversion Value below the then par value of the shares of Voting Common Stock issuable upon conversion of the Series B Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Voting Common Stock at such adjusted Series B Conversion Value.

(h) Redemption of Series B Preferred Stock. To the extent funds are legally available for redemption and so long as the Corporation has redeemed all shares of Series C Preferred

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Stock requested to be redeemed in a Series C Redemption Election Notice, if any, the Corporation may, at its option and by written notice to the Series B Holders, redeem shares of Series B Preferred Stock at a price equal to the Series B Original Issue price plus all accrued but unpaid dividends thereon (the "Series B Redemption Price") at any time on or after the fifth anniversary of the date of issuance of such shares, from the Series B Holders.

(i) Redemption Notice. Written notice of the redemption (the "Series B Redemption Election Notice") shall be mailed, postage prepaid, to each holder of record of Series B Preferred Stock, at its address last shown on the records of the Corporation, not less than 30 days prior to the date upon which the Corporation elects to redeem shares of Series B Preferred Stock (the "Series B Redemption Date"). The Series B Redemption Election Notice shall state:

(A) the number of shares of Series B Preferred Stock held by the holder that the Corporation shall redeem on the Series B Redemption Date specified in the Series B Redemption Election Notice;

(B) the Series B Redemption Date and the Series B Redemption Price;

and

(C) that the holder is to surrender to the Corporation, in the manner and at the place designated, his certificate or certificates representing the shares of Series B Preferred Stock to be redeemed.

(ii) Optional Conversion. As of any Series B Redemption Date, the Series B Holders may, at their option, cause the Corporation to convert the shares of Series B Preferred Stock specified in the Series B Redemption Election Notice into shares of Voting Common Stock in lieu of a redemption of such shares. In the event of such an election, each share of Series B Preferred Stock held by such Series B Holder specified in the Series B Redemption Election Notice shall be subject to conversion into the number of fully paid and nonassessable shares of Voting Common Stock which results from dividing the Series B Original Issue Price by the Series B Conversion Value. The "Series B Conversion Value" shall initially be equal to an amount equal to the Series B Original Issue Price and shall be subject to adjustment from time to time as provided herein. In the event that a Series B Holder elects to convert the shares of Series B Preferred Stock in lieu of redemption as provided in this Section 5(h)(ii), such shareholder shall notify the Corporation in writing of such election within 10 days of receipt of the Series B Redemption Election Notice.

(iii) Surrender of Certificates; Payment. On or before the Series B Redemption Date, each holder of shares of Series B Preferred Stock to be redeemed or converted on the Series B Redemption Date, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series B Redemption Election Notice, and thereupon (A) in the event that such shares are to be redeemed, the Series B Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, or (B) in the event that such shares are to be converted, issue and deliver to such holder a certificate evidencing the number of shares of Voting Common Stock to which such holder shall be entitled and (C) in either event, each

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surrendered certificate shall be canceled and retired and shall not under any circumstances be reissued.

(i) Adjustments to Series B Conversion Value.

(i) No Adjustment of Conversion Value. No adjustment in the Series B Conversion Value shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued by the Corporation is less than the Series B Conversion Value in effect on the date of, and immediately prior to, such issue. "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the Series B Original Issue Date, other than shares of Common Stock issued or issuable:

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

(B) to officers, directors or employees of, or financial advisors or other consultants to, the Corporation pursuant a Plan or pursuant to any acquisition, financing or other written agreement so long as any such Plan or written agreement has been approved by the Board; or

(C) as a dividend or distribution on the Common Stock or the Preferred Stock.

(ii) Deemed Issuance of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or any evidences of indebtedness, shares (other than Common Stock or Preferred Stock) or Convertible Securities then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue provided, that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share of such Additional Shares of Common Stock would be less than the Series B Conversion Value in effect on the date of and immediately prior to such issue, and provided, further, that in any case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Series B Conversion Value shall be made upon the subsequent issue of shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or any increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series B Conversion Value computed upon the original issue of such Options or Convertible Securities and any subsequent adjustments based thereon shall, upon any such increase or decrease becoming effective, be

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recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; and

(C) on the expiration or cancellation of any Options or the termination of the right to convert or exchange any Convertible Securities which shall have not been exercised, if the Series B Conversion Value shall have been adjusted upon the original issuance of such Options or Convertible Securities or shall have been subsequently adjusted pursuant to clause (B) above, the Series B Conversion Value shall be recomputed as if the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issuance of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, if any, or for the issuance of all such Convertible Securities, whether or not actually converted or exchanged, plus the consideration actually received by the Corporation upon such conversion or exchange, if any.

(iii) Adjustment of Series B Conversion Value Upon Issuance of Additional Shares of Common Stock. If the Corporation shall issue Additional Shares of Common Stock without consideration or for a consideration per share less than the Series B Conversion Value in effect on the date of and immediately prior to such issuance, then and in such event, the Series B Conversion Value shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one cent) determined by dividing (A) an amount equal to the sum of (w) the number of shares of Common Stock outstanding immediately prior to such issue (determined on a fully-diluted basis; i.e., treating as issued and outstanding all shares of Common Stock issuable upon exercise, exchange or conversion of all outstanding options (to the extent then vested or exercisable), warrants or other securities exercisable or exchangeable for or convertible into, directly or indirectly, shares of Common Stock) multiplied by the then existing Series B Conversion Value, plus (x) the consideration, if any, received by the Corporation (or deemed to have been received by this Corporation) upon such issue of Additional Shares of Common Stock, by (B) the sum of (y) the number of shares of the Corporation's issued and outstanding Common Stock on a fully-diluted basis immediately before the issuance of such Additional Shares of Common Stock and (z) the number of shares of Additional Shares of Common Stock that were issued (or deemed to have been issued) in the transaction to which this Section applies. Notwithstanding the foregoing provisions of this Section, if the operation of the foregoing provisions shall result in a new Series B Conversion Value which is less than or equal to the price paid or deemed to have been paid for such Additional Shares of Common Stock (the "Additional Shares Issue Price"), then the new Series B Conversion Value shall be the amount which is \$0.001 more than the Additional Shares Issue Price. If such Additional Shares of Common Stock are issued for no consideration, then the Additional Shares Issue Price shall be deemed to be \$0.001.

(iv) Adjustment to the Conversion Rate due to Stock Split, Stock Dividend or Other Similar Event. If, prior to the conversion of all the Series B Preferred Stock, the number of outstanding shares of Common Stock is increased by a stock split, stock dividend or other similar event, the Series B Conversion Value shall be proportionately reduced, or if the number of outstanding shares of Common Stock is decreased by a combination or reclassification of shares, or other similar event, the Series B Conversion Value shall be proportionately increased.

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(v) Adjustment Due to Consolidation, Merger, Exchange of Shares, Recapitalization, Reorganization or Other Similar Event. If, prior to the conversion of all the Series B Preferred Stock, (i) there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event, as a result of which shares of Common Stock of this corporation shall be changed into the same or a different number of shares of the same or another class or classes of stock or securities of this corporation or another entity, or (ii) there occurs a sale of all or substantially all of the Corporation's assets that is not deemed to be a liquidation, dissolution or winding up of this corporation, then the Series B Holders thereafter shall have the right to receive upon conversion of the shares of Series B Preferred Stock held by them, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore issuable upon conversion, (i) such stock, securities and/or other assets which the Series B Holders would have been entitled to receive in such transaction had the Series B Preferred Stock, together with all unpaid and accrued dividends thereon (whether or not earned or declared), been converted immediately prior to such transaction, and in any such case appropriate provisions shall be made with respect to the rights and interests of the Series B Holders to the end that the provisions hereof (including, without limitation, provisions for the adjustment of the Series B Conversion Value) shall thereafter be applicable, as nearly as may be practicable in relation to any securities thereafter deliverable upon the exercise hereof.

(vi) Certificates as to Adjustments. Upon each adjustment or readjustment of the Series B Conversion Value, the Corporation, at its expense, promptly shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Preferred Stock a certificate of the Corporation setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the then effective Series B Conversion Value, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of such Series B Preferred Stock.

(j) Protective Provisions. So long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by the FBCA) of a majority of the Series B Holders:

(i) alter or change the rights, preferences or privileges of the Series B Preferred Stock, including, but not limited to, the creation or authorization of securities which rank senior to the Series B Preferred Stock;

(ii) increase the size of the authorized number of shares of Series B Preferred Stock; or

(iii) do any act or thing not authorized or contemplated by the Articles of Incorporation which would result in taxation of the Series B Holders under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended).

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6. Series C Preferred Stock

(a) Designation and Amount. 10,000,000 shares of the 50,000,000 authorized shares of Preferred Stock are designated as shares of "8% Series C Cumulative Convertible Preferred Stock" (the "Series C Preferred Stock").

(b) Relative Rights of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions, of the Series A Preferred Stock, the Series B Preferred Stock, Series C Preferred Stock and the Series D Preferred Stock are expressly made *pari passu* to each other except with respect to voting rights in which case on all matters submitted to the Corporation's shareholders the holders of the Preferred Stock shall have the voting rights established herein.

(c) Voting Rights. Except as provided in this Section, the holders of Series C Preferred Stock (the "Series C Holders") shall have no voting power whatsoever except to the extent otherwise expressly provided by the FBCA, and no Series C Holder shall vote or otherwise participate in any proceeding in which actions shall be taken by the Corporation or the shareholders thereof or be entitled to notification as to any meeting of the shareholders. The Series C Holders shall have the right to vote the shares of Series C Preferred Stock as one class together on the election of two individuals as members of the Board as more specifically provided in a definite voting agreement entered into among the Corporation and Series C Holders.

(d) Dividends.

(i) The Series C Holders shall be entitled to receive, when, as and if declared, out of legally available funds, cumulative dividends accruing on the Series C Preferred Stock at a rate equal to 8% of the Series C Original Issue Price (as defined below) per annum per share (the "Series C Dividend Rate"), payable quarterly in arrears as follows: (A) during the first two (2) years following the Series C Original Issue Date (as defined below), such payment shall be made in shares of Series C Preferred Stock (the "Series C Payment-in-Kind Dividend") in lieu of cash calculated by dividing the Series C Dividend Rate to be paid on such date by the Series C Original Issue Price on the date immediately preceding each Dividend Payment Date, as defined below, and (B) after the second anniversary of the Series C Original Issue Date, such payment shall be in cash. The "Series C Original Issue Price" shall mean the price at which shares of Series C Preferred Stock were originally issued, subject to appropriate adjustment as set forth herein. In conjunction with the payment of any Series C Payment-in-Kind Dividend, the Corporation shall promptly issue and deliver to the holders of the shares of Series C Preferred Stock, a certificate or certificates for the number of additional shares of Series C Preferred Stock to be so issued. Any shares of Series C Preferred Stock issued to the holders of Series C Preferred Stock on account of any Series C Payment-in-Kind Dividend shall be deemed to be issued on the Dividend Payment Date. In lieu of any fractional share of Series C Preferred Stock which would otherwise be issued in payment of a dividend on a Dividend Payment Date, the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount in cash.

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(ii) All dividends shall accrue on any given share of Series C Preferred Stock from the most recent date on which a dividend has been paid with respect to such share of Series C Preferred Stock or, if no dividends have been paid, from the date of original issuance of such share of Series C Preferred Stock ("Series C Original Issue Date"). All dividends shall accrue from day to day, whether or not declared, based on the actual number of days elapsed and shall be payable quarterly in arrears on January 1, April 1, July 1 and October 1 of each year (each a "Dividend Payment Date") commencing on the Series C Original Issue Date, provided, that if a Dividend Payment Date is not a business day, then the dividend shall be payable on the first immediately succeeding business day. Dividends shall be paid to the holders of record of the Series C Preferred Stock as their names appear on the stock transfer records of the Corporation on the date (the "Record Date") designated by the Board as the date of record for the payment of such dividend; and, further provided, that such Record Date may not precede the date upon which the resolution fixing the Record Date is adopted and may not be more than sixty (60) days prior to the Dividend Payment Date.

(iii) No dividends may be paid or set apart for such payment on any shares of Common Stock and no Common Stock may be repurchased or otherwise retired for value nor may funds be set apart for payment with respect thereto, if dividends have not been paid in full on the Preferred Stock as provided in this Article.

(iv) Reservation of Series C Preferred Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Series C Preferred Stock, solely for the purpose of fulfilling the payment of the Series C Payment-in-Kind Dividend, such number of shares of Series C Preferred Stock as shall from time to time be sufficient to fulfill the payment of the Series C Payment-in-Kind Dividend. If at any time the number of authorized but unissued shares of Series C Preferred Stock shall not be sufficient to pay the Series C Payment-in-Kind Dividend, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Series C Preferred Stock to such number of shares as shall be sufficient for such purposes.

(e) Rank. The Series C Preferred Stock shall rank senior to all shares of Common Stock and *pari passu* with all shares of Series A Preferred Stock and Series B Preferred Stock, as to any distribution of assets upon any liquidation, dissolution or winding up of this corporation, whether voluntary or involuntary (all such distributions being referred to collectively as "Distributions").

(f) Liquidation Preference.

(i) If any Distribution, occurs, the Series C Holders shall be entitled to receive, prior and in preference to any Distribution to the holders of the Common Stock and *pari passu* with all shares of Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock, an amount per share equal to the greater of (A) the Series C Original Issue Price, together with unpaid and accrued dividends (whether or not earned or declared) on the Series C Preferred Stock, or (B) such amount per share as would have been payable had all shares of Series C Preferred Stock been converted into Common Stock pursuant to paragraph (g), below, immediately prior to such Distribution. If upon any such Distribution, and after payment in full of any amounts due the creditors of the Corporation, the assets available to be distributed

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to the holders of Preferred Stock shall be insufficient to pay to the holders of Preferred Stock the full preferential amounts due to the holders of Preferred Stock, then the entire assets of the Corporation legally available for distribution shall be distributed among the holders of Preferred Stock pro rata.

(ii) Upon the completion of the Distribution to the holders of Preferred Stock as required, if assets remain in the Corporation, they shall be distributed to holders of Common Stock, pro rata based on the number of shares held by each holder of Common Stock.

(g) Conversion Rights. The Series C Holders may, at their option, cause the Corporation to convert their shares of Series C Preferred Stock into shares of Voting Common Stock as follows:

(i) Right to Convert. On the earlier to occur of: (a) any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event or there occurs a sale of all or substantially all of the Corporation's assets; (b) an initial public offering of shares of Voting Common Stock at a price per share greater than the Series C Original Issue Price; or (c) at any time after the third anniversary of the Series C Original Issue Date, each share of Series C Preferred Stock shall be convertible into shares of Voting Common Stock by the Corporation, without the payment of any additional consideration, at the option of the Series C Holder thereof, into the number of fully paid and nonassessable shares of Voting Common Stock which results from dividing the Series C Original Issue Price by the conversion value per share in effect for each share of Series C Preferred Stock (the "Series C Conversion Value"). The Series C Conversion Value shall initially be equal to an amount equal to the Series C Original Issue Price and shall be subject to adjustment from time to time as provided herein.

(ii) Mechanics of Conversion. Before any Series C Holder shall be entitled to voluntarily convert shares of Series C Preferred Stock into shares of Voting Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates for such shares of Series C Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), duly endorsed, to the Corporation at the offices of the Corporation, together with written notice to the Corporation at such office that such holder elects to convert all or any number of the shares of the Series C Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Voting Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. 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 C Preferred Stock to be converted (the "Series C Conversion Time"), and the person entitled to receive the shares of Voting Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on such date. The Corporation shall, as soon as practicable after the Series C Conversion Time, (A) issue and deliver to such holder of Series C

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Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series C Preferred Stock represented by the surrendered certificate that were not converted into Voting Common Stock, (B) pay in cash such amount as provided in subsection (iii), below, in lieu of any fraction of a share of Voting Common Stock otherwise issuable upon such conversion and (C) pay all accrued but unpaid dividends on the shares of Series C Preferred Stock converted.

(iii) Fractional Shares. No fractional shares of Voting Common Stock shall be issued upon conversion of shares of Series C Preferred Stock, but the number of shares of Voting Common Stock shall be rounded down to the nearest whole number. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Voting Common Stock as determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series C Preferred Stock the holder is at the time converting into Voting Common Stock and the aggregate number of shares of Voting Common Stock issuable upon such conversion.

(iv) Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Voting Common Stock upon conversion of shares of Series C Preferred Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involving the issuance and delivery of shares of Voting Common Stock in a name other than that in which the shares of Series C Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(v) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times when the Series C Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued shares of Voting Common Stock, solely for the purpose of effecting the conversion of the shares of Series C Preferred Stock, such number of shares of its duly authorized shares of Voting Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock. If at any time the number of authorized but unissued shares of Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series C Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation. Before taking any action which would cause an adjustment reducing the Series C Conversion Value below the then par value of the shares of Voting Common Stock issuable upon conversion of the Series C Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Voting Common Stock at such adjusted Series C Conversion Value.

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(h) Adjustments to Series C Conversion Value.

(i) No Adjustment of Conversion Value. No adjustment in the Series C Conversion Value shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued by the Corporation is less than the Series C Conversion Value in effect on the date of, and immediately prior to, such issue. "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the Series C Original Issue Date, other than shares of Common Stock issued or issuable;

(A) upon conversion of shares of Series C Preferred Stock;

(B) to officers, directors or employees of, or financial advisors or other consultants to, the Corporation pursuant a Plan or pursuant to any acquisition, financing or other written agreement so long as any such Plan or written agreement has been approved by the Board; or

(C) as a dividend or distribution on the Common Stock or the Preferred Stock.

(ii) Deemed Issuance of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Series C Original Issue Date shall issue any Options or any evidences of indebtedness, shares (other than Common Stock or Preferred Stock) or Convertible Securities then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue provided, that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share of such Additional Shares of Common Stock would be less than the Series C Conversion Value in effect on the date of and immediately prior to such issue, and provided, further, that in any case in which Additional Shares of Common Stock are deemed to be issued;

(A) no further adjustment in the Series C Conversion Value shall be made upon the subsequent issue of shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or any increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series C Conversion Value computed upon the original issue of such Options or Convertible Securities and any subsequent adjustments based thereon shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

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(C) on the expiration or cancellation of any Options or the termination of the right to convert or exchange any Convertible Securities which shall have not been exercised, if the Series C Conversion Value shall have been adjusted upon the original issuance of such Options or Convertible Securities or shall have been subsequently adjusted pursuant to clause (B) above, the Series C Conversion Value shall be recomputed as if the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issuance of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, if any, or for the issuance of all such Convertible Securities, whether or not actually converted or exchanged, plus the consideration actually received by the Corporation upon such conversion or exchange, if any.

(iii) Adjustment of Series C Conversion Value Upon Issuance of Additional Shares of Common Stock. If the Corporation shall issue Additional Shares of Common Stock without consideration or for a consideration per share less than the Series C Conversion Value in effect on the date of and immediately prior to such issuance, then and in such event, the Series C Conversion Value shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one cent) determined by dividing (A) an amount equal to the sum of (w) the number of shares of Common Stock outstanding immediately prior to such issue (determined on a fully-diluted basis; i.e., treating as issued and outstanding all shares of Common Stock issuable upon exercise, exchange or conversion of all outstanding options (to the extent then vested or exercisable), warrants or other securities exercisable or exchangeable for or convertible into, directly or indirectly, shares of Common Stock) multiplied by the then existing Series B Conversion Value, plus (x) the consideration, if any, received by the Corporation (or deemed to have been received by this Corporation) upon such issue of Additional Shares of Common Stock, by (B) the sum of (y) the number of shares of the Corporation's issued and outstanding Common Stock on a fully-diluted basis immediately before the issuance of such Additional Shares of Common Stock and (z) the number of shares of Additional Shares of Common Stock that were issued (or deemed to have been issued) in the transaction to which this Section applies. Notwithstanding the foregoing provisions of this Section, if the operation of the foregoing provisions shall result in a new Series C Conversion Value which is less than or equal to the price paid or deemed to have been paid for such Additional Shares of Common Stock (the "Additional Shares Issue Price"), then the new Series C Conversion Value shall be the amount which is \$0.001 more than the Additional Shares Issue Price. If such Additional Shares of Common Stock are issued for no consideration, then the Additional Shares Issue Price shall be deemed to be \$0.001.

(iv) Adjustment to the Conversion Rate due to Stock Split, Stock Dividend or Other Similar Event. If, prior to the conversion of all the Series C Preferred Stock, the number of outstanding shares of Common Stock is increased by a stock split, stock dividend or other similar event, the Series C Conversion Value shall be proportionately reduced, or if the number of outstanding shares of Common Stock is decreased by a combination or reclassification of shares, or other similar event, the Series C Conversion Value shall be proportionately increased.

(v) Adjustment Due to Consolidation, Merger, Exchange of Shares, Recapitalization, Reorganization or Other Similar Event. If, prior to the conversion of all the

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Series C Preferred Stock, (i) there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event, as a result of which shares of Common Stock of this corporation shall be changed into the same or a different number of shares of the same or another class or classes of stock or securities of this corporation or another entity, or (ii) there occurs a sale of all or substantially all of the Corporation's assets that is not deemed to be a liquidation, dissolution or winding up of this corporation, then the Series C Holders thereafter shall have the right to receive upon conversion of the shares of Series C Preferred Stock held by them, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore issuable upon conversion, (i) such stock, securities and/or other assets which the Series C Holders would have been entitled to receive in such transaction had the Series C Preferred Stock, together with all unpaid and accrued dividends thereon (whether or not earned or declared), been converted immediately prior to such transaction, and in any such case appropriate provisions shall be made with respect to the rights and interests of the Series C Holders to the end that the provisions hereof (including, without limitation, provisions for the adjustment of the Series C Conversion Value) shall thereafter be applicable, as nearly as may be practicable in relation to any securities thereafter deliverable upon the exercise hereof.

(vi) Certificates as to Adjustments. Upon each adjustment or readjustment of the Series C Conversion Value, the Corporation, at its expense, promptly shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series C Preferred Stock a certificate of the Corporation setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the then effective Series C Conversion Value, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of such Series C Preferred Stock.

(i) Redemption of Series C Preferred Stock.

(i) Redemption Rights. To the extent funds are legally available for redemption, the holders of at least a majority of Series C Preferred Stock shall have the right, exercisable by delivery to the Corporation of a written notice of election (a "Series C Redemption Election Notice") at any time following the third anniversary of the Series C Original Issue Date, to elect to have the Corporation redeem all of the outstanding shares of Series C Preferred Stock for an amount per share equal to the Series C Original Issue Price (as adjusted for any stock dividends, combinations or splits) plus any dividends accrued but unpaid thereon (the "Series C Redemption Price"). On the forty-fifth (45th) day following the date on which the Series C Redemption Election Notice is delivered to the Corporation (the "Series C Redemption Date"), the Corporation shall redeem all of the outstanding shares of Series C Preferred Stock at the Series C Redemption Price;

(ii) Redemption Mechanics. If a Series C Redemption Election Notice shall be delivered to the Corporation, then at least 20 but not more than 30 days prior to the Series C Redemption Date, written notice (a "Series C Redemption Notice") shall be given by the Corporation by delivery in person, certified or registered mail, return receipt requested,

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telecopier or telex, to each holder of record (at the close of business on the business day next preceding the date on which a Series C Redemption Notice is given) of shares of Series C Preferred Stock scheduled to be redeemed on the Series C Redemption Date, notifying such holder of the redemption and specifying the Series C Redemption Price for each of the shares of such holder's Series C Preferred Stock scheduled to be redeemed on the Series C Redemption Date and the place where said Series C Redemption Price shall be payable. The Series C Redemption Notice shall be addressed to each holder of Series C Preferred Stock scheduled to be redeemed on the Series C Redemption Date at his, her or its address as shown by the records of the Corporation. From and after the close of business on the Series C Redemption Date, unless there shall have been a default in the payment of the Series C Redemption Price, all rights of holders of shares of Series C Preferred Stock (except the right to receive the Series C Redemption Price) shall cease with respect to the shares scheduled to be redeemed on the Series C Redemption Date, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. However, if the funds of the Corporation legally available for redemption of shares of Series C Preferred Stock on the Series C Redemption Date are insufficient to redeem the total number of shares of Series C Preferred Stock scheduled to be redeemed on the Series C Redemption Date, the Corporation shall redeem the maximum number of shares of Series C Preferred Stock for which the Corporation shall have sufficient funds legally available therefor from the holders thereof on a pro rata basis based on the respective amounts which would be payable to each such holder if the full number of shares of Series C Preferred Stock scheduled to be redeemed on the Series C Redemption Date were actually redeemed. If, for any reason, the Corporation fails to redeem all shares of Series C Preferred Stock entitled to such redemption on the Series C Redemption Date, the unredeemed shares shall remain outstanding and shall continue to have all rights and preferences provided for herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series C Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above.

(iii) Redeemed or Otherwise Acquired Shares to be Retired. Any shares of Series C Preferred Stock redeemed pursuant to this paragraph (i) or otherwise acquired by the Corporation in any manner whatsoever shall be cancelled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Preferred Stock

(j) Protective Provisions. So long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by the FBCA) of a majority of the Series C Holders:

(i) alter or change the rights, preferences or privileges of the Series C Preferred Stock, including, but not limited to, the creation or authorization of securities which rank senior to the Series C Preferred Stock;

(ii) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any sale or disposition, by the Corporation or any subsidiary, of substantially all of the

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assets of the Corporation and its subsidiaries taken as a whole, or consent to any of the foregoing;

(iii) amend, alter or repeal any provision of the Articles of Incorporation or Bylaws of the Corporation;

(iv) create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock unless the same ranks junior to the Series C Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of Series C Preferred Stock or increase the authorized number of shares of any additional class or series of capital stock unless the same ranks junior to the Series C Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

(v) (A) reclassify, alter or amend any existing security of the Corporation that is *pari passu* with the Series C Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series C Preferred Stock in respect of any such right, preference or privilege, or (B) reclassify, alter or amend any existing security of the Corporation that is junior to the Series C Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or *pari passu* with the Series C Preferred Stock in respect of any such right, preference or privilege;

(vi) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (A) redemptions of the Series C Preferred Stock or dividends or distributions on the Preferred Stock as expressly authorized herein, (B) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (C) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof or (D) as approved by the Board of Directors, including the approval of at least one Series C Director;

(vii) create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security;

(viii) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;

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(ix) increase or decrease the authorized number of directors constituting the Board of Directors; or

(x) do any act or thing not authorized or contemplated by the Articles of Incorporation which would result in taxation of the Series C Holders under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended).

7. Series D Preferred Stock

(a) Designation and Amount. 4,000,000 shares of the 50,000,000 authorized shares of Preferred Stock are designated as shares of "8% Series D Cumulative Convertible Preferred Stock" (the "Series D Preferred Stock").

(b) Relative Rights of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions, of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock are expressly made *pari passu* to each other except with respect to voting rights in which case on all matters submitted to the Corporation's shareholders the holders of the Preferred Stock shall have the voting rights established herein.

(c) Voting Rights. Except as provided in this Section, the holders of record of the Series D Preferred Stock (the "Series D Holders") shall have no voting power whatsoever except to the extent otherwise expressly provided by the FBCA, and no Series D Holder shall vote or otherwise participate in any proceeding in which actions shall be taken by the Corporation or the shareholders thereof or be entitled to notification as to any meeting of the shareholders.

(d) Dividends.

(i) The Series D Holders shall be entitled to receive, when, as and if declared by the Board, out of legally available funds therefor, cumulative dividends accruing on the Series D Preferred Stock at a rate equal to 8% of the Series D Original Issue Price (as defined below) per annum per share (the "Series D Dividend Rate"), payable quarterly in arrears in cash. The "Series D Original Issue Price" shall mean the price at which shares of Series D Preferred Stock were originally issued, subject to appropriate adjustment as set forth herein.

(ii) All dividends shall accrue on any given share of Series D Preferred Stock from the most recent date on which a dividend has been paid with respect to such share of Series D Preferred Stock or, if no dividends have been paid, from the date of original issuance of such share of Series D Preferred Stock ("Series D Original Issue Date"). All dividends shall accrue from day to day, whether or not declared, based on the actual number of days elapsed and shall be payable quarterly in arrears on January 1, April 1, July 1 and October 1 of each year (each a "Dividend Payment Date") commencing on the Series D Original Issue Date, provided, that if a Dividend Payment Date is not a business day, then the dividend shall be payable on the first immediately succeeding business day. Dividends shall be paid to the holders of record of the Series D Preferred Stock as their names appear on the stock transfer records of the Corporation on the date (the "Record Date") designated by the Board as the date of record for the payment of

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such dividend; and, further provided, that such Record Date may not precede the date upon which the resolution fixing the Record Date is adopted and may not be more than sixty (60) days prior to the Dividend Payment Date.

(iii) No dividends may be paid or set apart for such payment on any shares of Common Stock and no Common Stock may be repurchased or otherwise retired for value nor may funds be set apart for payment with respect thereto, if dividends have not been paid in full on the Preferred Stock as provided in this Article.

(e) Rank. The Series D Preferred Stock shall rank senior to all shares of Common Stock and *pari passu* with all shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, as to any distribution of assets upon any liquidation, dissolution or winding up of this corporation, whether voluntary or involuntary (all such distributions being referred to collectively as "Distributions").

(f) Liquidation Preference.

(i) If any Distribution, occurs, the Series D Holders shall be entitled to receive, prior and in preference to any Distribution to the holders of the Common Stock and *pari passu* with all shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, an amount per share equal to the greater of (A) the Series D Original Issue Price, together with unpaid and accrued dividends (whether or not earned or declared) on the Series D Preferred Stock, and (B) such amount per share as would have been payable had all shares of Series D Preferred Stock been converted into Common Stock pursuant to paragraph (g), below, immediately prior to such Distribution. If upon any such Distribution, and after payment in full of any amounts due the creditors of the Corporation, the assets available to be distributed to the holders of Preferred Stock shall be insufficient to pay to the holders of Preferred Stock the full preferential amounts due to the holders of Preferred Stock, then the entire assets of the Corporation legally available for distribution shall be distributed among the holders of Preferred Stock pro rata.

(ii) Upon the completion of the Distribution to the holders of Preferred Stock as required, if assets remain in the Corporation, they shall be distributed to holders of Common Stock, pro rata based on the number of shares held by each holder of Common Stock.

(g) Conversion Rights.

(i) Mandatory Conversion by Corporation. The Corporation shall cause all of the outstanding shares of Series D Preferred Stock to be converted into shares of Voting Common Stock at any time if: (A) there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event or there occurs a sale of all or substantially all of the Corporation's assets; or (B) the Corporation conducts an initial public offering of shares of Voting Common Stock at a price per share greater than the Series D Original Issue Price. Each outstanding share of Series D Preferred Stock shall be, on the happening of the above listed events, subject to conversion into shares of Voting Common Stock at the then effective Series D Conversion Value, as defined below. The Corporation shall give thirty (30) days notice of its intent to convert in accordance with this Section. After the receipt of such

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notice, each Series D Holder shall surrender to the Corporation the duly endorsed certificate evidencing the shares of Series D Preferred Stock owned by such holder (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate). The Corporation shall, as soon as practicable after receipt of such certificate, issue and deliver to such holder a certificate evidencing the number of shares of Voting Common Stock to which such holder shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series D Preferred Stock to be converted, and the person or persons entitled to receive the shares of Voting Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on such date.

(ii) Mechanics of Conversion. Before any Series D Holder shall be entitled to convert shares of Series D Preferred Stock into shares of Voting Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates for such shares of Series D Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), duly endorsed, to the Corporation at the offices of the Corporation, together with written notice to the Corporation at such office that such holder elects to convert all or any number of the shares of the Series D Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Voting Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series D Preferred Stock to be converted (the "Series D Conversion Time"), and the person entitled to receive the shares of Voting Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on such date. The Corporation shall, as soon as practicable after the Series D Conversion Time, (A) issue and deliver to such holder of Series D Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series D Preferred Stock represented by the surrendered certificate that were not converted into Voting Common Stock, (B) pay in cash such amount as provided in Subsection (iii), below, in lieu of any fraction of a share of Voting Common Stock otherwise issuable upon such conversion and (C) pay all accrued but unpaid dividends on the shares of Series D Preferred Stock converted.

(iii) Fractional Shares. No fractional shares of Voting Common Stock shall be issued upon conversion of shares of Series D Preferred Stock, but the number of shares of Voting Common Stock shall be rounded down to the nearest whole number. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Voting Common Stock as

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determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series D Preferred Stock the holder is at the time converting into Voting Common Stock and the aggregate number of shares of Voting Common Stock issuable upon such conversion.

(iv) Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Voting Common Stock upon conversion of shares of Series D Preferred Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involving the issuance and delivery of shares of Voting Common Stock in a name other than that in which the shares of Series D Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(v) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times when the Series D Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued shares of Voting Common Stock, solely for the purpose of effecting the conversion of the shares of Series D Preferred Stock, such number of shares of its duly authorized shares of Voting Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series D Preferred Stock. If at any time the number of authorized but unissued shares of Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series D Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation. Before taking any action which would cause an adjustment reducing the Series D Conversion Value below the then par value of the shares of Voting Common Stock issuable upon conversion of the Series D Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Voting Common Stock at such adjusted Series D Conversion Value.

(h) Redemption of Series D Preferred Stock. To the extent funds are legally available for redemption and so long as the Corporation has redeemed all shares of Series C Preferred Stock requested to be redeemed in a Series C Redemption Election Notice, if any, the Corporation may, at its option and by written notice to the Series D Holders, redeem shares of Series D Preferred Stock at a price equal to the Series D Original Issue price plus all accrued but unpaid dividends thereon (the "Series D Redemption Price") at any time on or after the fifth anniversary of the date of issuance of such shares, from the Series D Holders.

(i) Redemption Notice. Written notice of the redemption (the "Series D Redemption Election Notice") shall be mailed, postage prepaid, to each holder of record of Series D Preferred Stock, at its address last shown on the records of the Corporation, not less than 30 days prior to the date upon which the Corporation elects to redeem shares of Series D Preferred Stock (the "Series D Redemption Date"). The Series D Redemption Election Notice shall state:

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(A) the number of shares of Series D Preferred Stock held by the holder that the Corporation shall redeem on the Series D Redemption Date specified in the Series D Redemption Election Notice;

(B) the Series D Redemption Date and the Series D Redemption Price;
and

(C) that the holder is to surrender to the Corporation, in the manner and at the place designated, his certificate or certificates representing the shares of Series D Preferred Stock to be redeemed.

(ii) Optional Conversion. As of any Series D Redemption Date, the Series D Holders may, at their option, cause the Corporation to convert the shares of Series D Preferred Stock specified in the Series D Redemption Election Notice into shares of Voting Common Stock in lieu of a redemption of such shares. In the event of such an election, each share of Series D Preferred Stock held by such Series D Holder specified in the Series D Redemption Election Notice shall be subject to conversion into the number of fully paid and nonassessable shares of Voting Common Stock which results from dividing the Series D Original Issue Price by the Series D Conversion Value. The "Series D Conversion Value" shall initially be equal to an amount equal to the Series D Original Issue Price and shall be subject to adjustment from time to time as provided herein. In the event that a Series D Holder elects to convert the shares of Series D Preferred Stock in lieu of redemption as provided in this Section 7(h)(ii), such shareholder shall notify the Corporation in writing of such election within 10 days of receipt of the Series D Redemption Election Notice.

(iii) Surrender of Certificates; Payment. On or before the Series D Redemption Date, each holder of shares of Series D Preferred Stock to be redeemed or converted on the Series D Redemption Date, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series D Redemption Election Notice, and thereupon (A) in the event that such shares are to be redeemed, the Series D Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, or (B) in the event that such shares are to be converted, issue and deliver to such holder a certificate evidencing the number of shares of Voting Common Stock to which such holder shall be entitled and (C) in either event, each surrendered certificate shall be canceled and retired and shall not under any circumstances be reissued.

(i) Adjustments to Series D Conversion Value.

(i) No Adjustment of Conversion Value. No adjustment in the Series D Conversion Value shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued by the Corporation is less than the Series D Conversion Value in effect on the date of, and immediately prior to, such issue. "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the Series D Original Issue Date, other than shares of Common Stock issued or issuable:

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- (A) upon conversion of shares of Series D Preferred Stock;
- (B) to officers, directors or employees of, or financial advisors or other consultants to, the Corporation pursuant a Plan or pursuant to any acquisition, financing or other written agreement so long as any such Plan or written agreement has been approved by the Board; or
- (C) as a dividend or distribution on the Common Stock or the Preferred Stock.

(ii) Deemed Issuance of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Series D Original Issue Date shall issue any Options or any evidences of indebtedness, shares (other than Common Stock or Preferred Stock) or Convertible Securities then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue provided, that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share of such Additional Shares of Common Stock would be less than the Series D Conversion Value in effect on the date of and immediately prior to such issue, and provided, further, that in any case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Series D Conversion Value shall be made upon the subsequent issue of shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or any increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series D Conversion Value computed upon the original issue of such Options or Convertible Securities and any subsequent adjustments based thereon shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; and

(C) on the expiration or cancellation of any Options or the termination of the right to convert or exchange any Convertible Securities which shall have not been exercised, if the Series D Conversion Value shall have been adjusted upon the original issuance of such Options or Convertible Securities or shall have been subsequently adjusted pursuant to clause (B) above, the Series D Conversion Value shall be recomputed as if the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issuance of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, if any, or for the issuance of all such

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Convertible Securities, whether or not actually converted or exchanged, plus the consideration actually received by the Corporation upon such conversion or exchange, if any.

(iii) Adjustment of Series D Conversion Value Upon Issuance of Additional Shares of Common Stock. If the Corporation shall issue Additional Shares of Common Stock without consideration or for a consideration per share less than the Series D Conversion Value in effect on the date of and immediately prior to such issuance, then and in such event, the Series D Conversion Value shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one cent) determined by dividing (A) an amount equal to the sum of (w) the number of shares of Common Stock outstanding immediately prior to such issue (determined on a fully-diluted basis; i.e., treating as issued and outstanding all shares of Common Stock issuable upon exercise, exchange or conversion of all outstanding options (to the extent then vested or exercisable), warrants or other securities exercisable or exchangeable for or convertible into, directly or indirectly, shares of Common Stock) multiplied by the then existing Series D Conversion Value, plus (x) the consideration, if any, received by the Corporation (or deemed to have been received by this Corporation) upon such issue of Additional Shares of Common Stock, by (B) the sum of (y) the number of shares of the Corporation's issued and outstanding Common Stock on a fully-diluted basis immediately before the issuance of such Additional Shares of Common Stock and (z) the number of shares of Additional Shares of Common Stock that were issued (or deemed to have been issued) in the transaction to which this Section applies. Notwithstanding the foregoing provisions of this Section, if the operation of the foregoing provisions shall result in a new Series D Conversion Value which is less than or equal to the price paid or deemed to have been paid for such Additional Shares of Common Stock (the "Additional Shares Issue Price"), then the new Series D Conversion Value shall be the amount which is \$0.001 more than the Additional Shares Issue Price. If such Additional Shares of Common Stock are issued for no consideration, then the Additional Shares Issue Price shall be deemed to be \$0.001.

(iv) Adjustment to the Conversion Rate due to Stock Split, Stock Dividend or Other Similar Event. If, prior to the conversion of all the Series D Preferred Stock, the number of outstanding shares of Common Stock is increased by a stock split, stock dividend or other similar event, the Series D Conversion Value shall be proportionately reduced, or if the number of outstanding shares of Common Stock is decreased by a combination or reclassification of shares, or other similar event, the Series D Conversion Value shall be proportionately increased.

(v) Adjustment Due to Consolidation, Merger, Exchange of Shares, Recapitalization, Reorganization or Other Similar Event. If, prior to the conversion of all the Series D Preferred Stock, (i) there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event, as a result of which shares of Common Stock of this corporation shall be changed into the same or a different number of shares of the same or another class or classes of stock or securities of this corporation or another entity, or (ii) there occurs a sale of all or substantially all of the Corporation's assets that is not deemed to be a liquidation, dissolution or winding up of this corporation, then the Series D Holders thereafter shall have the right to receive upon conversion of the shares of Series D Preferred Stock held by them, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore issuable upon conversion, (i) such stock, securities and/or other assets which the Series D Holders would have been entitled to receive in such

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transaction had the Series D Preferred Stock, together with all unpaid and accrued dividends thereon (whether or not earned or declared), been converted immediately prior to such transaction, and in any such case appropriate provisions shall be made with respect to the rights and interests of the Series D Holders to the end that the provisions hereof (including, without limitation, provisions for the adjustment of the Series D Conversion Value) shall thereafter be applicable, as nearly as may be practicable in relation to any securities thereafter deliverable upon the exercise hereof.

(vi) Certificates as to Adjustments. Upon each adjustment or readjustment of the Series D Conversion Value, the Corporation, at its expense, promptly shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series D Preferred Stock a certificate of the Corporation setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series D Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the then effective Series D Conversion Value, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of such Series D Preferred Stock.

(j) Protective Provisions. So long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by the FBCA) of a majority of the Series D Holders:

(i) alter or change the rights, preferences or privileges of the Series D Preferred Stock, including, but not limited to, the creation or authorization of securities which rank senior to the Series D Preferred Stock;

(ii) increase the size of the authorized number of shares of Series D Preferred Stock; or

(iii) do any act or thing not authorized or contemplated by the Articles of Incorporation which would result in taxation of the Series D Holders under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended).

8. Authorized Preferred Stock. The Board is expressly authorized to provide for the issuance of all or any shares of Authorized Preferred Stock, if any, in one or more classes or series, and to fix for each such class or series such voting powers limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board providing for the issuance of such class or series and as may be permitted by the FBCA, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the

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Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions.

IN WITNESS WHEREOF, this Amendment No. 1 to Amended and Restated Articles of Incorporation of Real Mortgage Systems, Inc. have been duly adopted by the Board of Directors of this corporation and have been duly executed as the act and deed of this corporation by its Secretary thereunto duly authorized this 8th day of January 2008.

REAL MORTGAGE SYSTEMS, INC.



By: _____

Name: Kim D. Thorpe

Title: Corporate Secretary