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Division of Corporations

FOLEY & LARDNER

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**ARTICLES OF AMENDMENT AND RESTATEMENT  
TO AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
KITEDESK, INC.**

Pursuant to Sections 607.1007 and 607.1003 of the Florida Business Corporation Act (the "FBCA"), KiteDesk, Inc., a corporation organized and existing under the laws of the State of Florida (the "Corporation"), hereby certifies as follows:

**FIRST:** That this Corporation is named KiteDesk, Inc. and was originally incorporated in the State of Florida on October 19, 2011, and that these Fourth Amended and Restated Articles of Incorporation shall amend, restate and supersede in their entirety any and all prior Articles of Incorporation, as amended, including, without limitation, those certain Third Amended and Restated Articles of Incorporation filed with the Secretary of State of the State of Florida on March 4, 2014, and any other Articles of Amendment or Certificates of Designation thereto, filed with the State of Florida from the date of the Corporation's original incorporation through the date hereof.

**SECOND:** These Fourth Amended and Restated Articles of Incorporation have been approved by the Board of Directors and shareholders of the Corporation in the manner and by the vote required by the FBCA. These Fourth Amended and Restated Articles of Incorporation contain amendments that require shareholder approval. These Fourth Amended and Restated Articles of Incorporation were approved by the shareholders pursuant to a written consent in lieu of a meeting dated September 30, 2015, and the votes cast for the amendment by the shareholders was sufficient for approval.

**THIRD:** The Articles of Incorporation of the Corporation as heretofore restated, amended or supplemented are hereby further amended and restated to read in their entirety as follows:

**"FOURTH AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

**OF  
KITEDESK, INC.**

**I.  
NAME**

The name of the corporation is KITEDESK, INC.

**II.**

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**PRINCIPAL PLACE OF BUSINESS AND MAILING ADDRESS**

The Corporation's principal place of business and mailing address is 1802 E. 3rd Avenue, Tampa, Florida 33605.

**III.  
AUTHORIZED SHARES**

A. **Classes of Stock.** The Corporation is authorized to issue two classes of shares to be designated, respectively, as "Preferred Stock" and "Common Stock." The total number of shares of Preferred Stock the Corporation shall have authority to issue is 10,752,986, no par value per share, 3,000,000 of which are designated "Series A Cumulative Convertible Preferred Stock" ("Series A Preferred Stock"), 1,161,668 of which are designated "Series B Cumulative Convertible Preferred Stock" ("Series B Preferred Stock"), 3,277,449 of which are designated "Series B-1 Cumulative Convertible Preferred Stock" ("Series B-1 Preferred Stock"), and with the Series B Preferred Stock, the "Pari Passu Preferred Stock", and collectively with the Series B Preferred Stock and the Series A Preferred Stock, the "Junior Preferred Stock", and 3,313,869 of which are designated "Series C Cumulative Convertible Preferred Stock" ("Series C Preferred Stock"). The total number of shares of Common Stock the Corporation shall have authority to issue is 20,752,986, no par value per share.

B. **Rights, Preferences and Restrictions of Preferred Stock.** The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock and Series C Preferred Stock are as set forth in this Article III(B).

1. **Dividend Provisions.**

(a) **Preferred Stock.** The holder of each share of Preferred Stock on the applicable record date shall be entitled to receive annual dividends, when as and if declared by the Board of Directors of the Corporation (the "Board") out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Common Stock, at the rate of (i) eight percent (8%) of the Series A Original Purchase Price (as defined below) with respect to Series A Preferred Stock, (ii) eight percent (8%) of the Series B Original Purchase Price (as defined below) with respect to Series B Preferred Stock, (iii) eight percent (8%) of the Series B-1 Original Purchase Price (as defined below) with respect to Series B-1 Preferred Stock, and (iv) eight percent (8%) of the Series C Original Purchase Price (as defined below) with respect to Series C Preferred Stock, in each case as adjusted for stock splits, stock dividends, reclassification and the like. Such dividends shall accrue on each share of Preferred Stock on a daily basis from its date of issuance, regardless of whether earned or declared. Dividends shall be cumulative so that if such dividend in respect of any previous or current annual dividend period, at the annual rate specified above, shall not have been paid the deficiency shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Common Stock. Any accumulated, unpaid dividends on Preferred Stock shall not bear interest. Cumulative dividends with respect to a share of Preferred Stock

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which are accrued, payable or in arrears shall, upon conversion of any such share, be paid in cash or, at the election of the holder of the shares then being converted, in additional shares of Common Stock at the then-current Conversion Price (as defined herein), to the extent assets are legally available therefor and any amounts for which assets are not legally available shall be paid promptly as assets become legally available therefor; any partial payment will be made pro rata among the holders of such shares.

(b) **Series C Preferred Stock Dividends.** The holders of the Series C Preferred Stock shall be entitled to receive dividends on a *pari passu* basis with each other pursuant to this Section 1(b) in preference and priority to any dividends or other distributions declared on the Corporation's Junior Preferred Stock and Common Stock. Furthermore, the Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation including without limitation the Junior Preferred Stock (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in these Articles of Incorporation) the holders of the Series C Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series C Preferred Stock in an amount at least equal to the greater of (i) the amount of the aggregate accrued or declared but unpaid dividends on such share of Series C Preferred Stock and not previously paid, and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series C Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series C Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of such Series C Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Series C Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series C Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series C Preferred Stock dividend.

(c) **Pari Passu Preferred Stock Dividends.** The holders of the Pari Passu Preferred Stock shall be entitled to receive dividends on a *pari passu* basis with each other pursuant to this Section 1(c) in preference and priority to any dividends or other distributions declared on the Corporation's Series A Preferred Stock and Common Stock, but subject to the dividends or other distributions on the Corporation's Series C Preferred Stock as set forth in Section 1(b). Furthermore, the Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in these Articles of Incorporation) the holders of the Series C Preferred Stock then outstanding shall first have received dividends

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pursuant to Section 1(b) above, and the holders of the Pari Passu Preferred Stock then outstanding shall receive, or simultaneously receive, a dividend on each outstanding share of Pari Passu Preferred Stock in an amount at least equal to the greater of (i) the amount of the aggregate accrued or declared but unpaid dividends on such share of Pari Passu Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Pari Passu Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Pari Passu Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Pari Passu Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) (Y) for shares of Series B-1 Preferred Stock, multiplying such fraction by an amount equal to the Series B-1 Original Issue Price (as defined below), and (Z) for shares of Series B Preferred Stock, multiplying such fraction by an amount equal to the Series B Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Pari Passu Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Pari Passu Preferred Stock dividend

(d) **Series A Dividend.** The holders of the Series A Preferred Stock shall be entitled to receive dividends on a *pari passu* basis with each other pursuant to this Section 1(d) in preference and priority to any dividends or other distributions declared on the Corporation's Common Stock, but subject to the dividends or other distributions on the Corporation's Series C Preferred Stock and the Corporation's Pari Passu Preferred Stock as set forth in Sections 1(b) and 1(c). Furthermore, the Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in these Articles of Incorporation) the holders of the Series C Preferred Stock and the Pari Passu Preferred Stock then outstanding shall first have received dividends pursuant to Sections 1(b) and 1(c) above, and the holders of the Series A Preferred Stock then outstanding shall receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to the greater of (i) the amount of the aggregate accrued or declared but unpaid dividends on such share of Series A Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of

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Series A Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Series A Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series A Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series A Preferred Stock dividend.

(c) **Original Issue Price.** The "**Series A Original Issue Price**" shall mean \$1.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. The "**Series B Original Issue Price**" shall mean \$0.80 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock. The "**Series B-1 Original Issue Price**" shall mean \$1.19 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B-1 Preferred Stock. The "**Series C Original Issue Price**" shall mean \$1.19 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock.

## 2. **Liquidation.**

### (a) **Preferred Stock Preference.**

(i) In the event of any liquidation, dissolution or winding up of the Corporation, or any other distribution of the assets of the Corporation amongst the shareholders for the purpose of winding up its affairs, whether voluntary or involuntary (each, a "**Liquidity Event**"), the holders of Series C Preferred Stock shall be entitled to receive, on a *pari passu* basis with each other but prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Junior Preferred Stock and Common Stock by reason of their ownership thereof, an amount per share equal to the Series C Original Issue Price, plus all accrued or declared but unpaid dividends thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "**Series C Liquidation Amount**"). If upon the occurrence of any such Liquidity Event, the assets and funds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(ii) Upon the occurrence of any Liquidity Event and after payment to the holders of Series C Preferred Stock pursuant to Section 2(a)(i) above, the holders of Series B-1 Preferred Stock and the holders of Series B Preferred Stock shall be entitled to receive, on a *pari passu* basis with each other but prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Series A Preferred Stock and

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Common Stock by reason of their ownership thereof, with respect to shares of Series B-1 Preferred Stock, an amount per share equal to the Series B-1 Original Issue Price, plus all accrued or declared but unpaid dividends thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "Series B-1 Liquidation Amount"), and with respect to shares of Series B Preferred Stock, an amount per share equal to the Series B Original Issue Price, plus all accrued or declared but unpaid dividends thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "Series B Liquidation Amount"). If upon the occurrence of any such Liquidity Event, the assets and funds thus distributed among the holders of the Pari Passu Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then, after payment to the holders of Series C Preferred Stock pursuant to Section 2(a)(i) above, the remaining entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Pari Passu Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(iii) Upon the occurrence of any Liquidity Event and after payment to the holders of Series C Preferred Stock and the Pari Passu Preferred Stock pursuant to Sections 2(a)(i) and 2(a)(ii) above, the holders of shares of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the Series A Original Issue Price, plus all accrued or declared but unpaid dividends thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "Series A Liquidation Amount"). If upon the occurrence of any such Liquidity Event, the assets and funds thus distributed among the holders of the Series A Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then, after payment to the holders of Series C Preferred Stock and Pari Passu Preferred Stock pursuant to Sections 2(a)(i) and 2(a)(ii) above, the remaining assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Remaining Assets. In the event of any such Liquidity Event, and subject to the payment in full of the liquidation preferences with respect to Preferred Stock as provided in subparagraph (a) of this Section 2, the remaining assets or funds shall be distributed to the holders of Preferred Stock and Common Stock on a pro rata basis, based on the aggregate number of shares of Common Stock then held by each holder on an as-converted basis (where each holder of Preferred Stock is to be treated for such purpose as holding in lieu of such Preferred Stock the greatest whole number of shares of Common Stock then issuable upon conversion in full of such Preferred Stock pursuant to Section 4 hereof as if such conversion had been effected).

(c) Certain Transactions.

(i) Deemed Liquidation Event. For purposes of this Section 2, each of the following events shall be considered a "Deemed Liquidation Event" unless the holders of at least a majority of the outstanding Preferred Stock (voting together as a single class on as-converted to Common Stock basis) elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

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in which: (A) A merger, share exchange or consolidation

party or (1) The Corporation is a constituent

(2) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(B) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

(ii) Valuation of Consideration. In a Deemed Liquidation Event, if the consideration received by the Corporation or its shareholders is other than cash, its value will be deemed to be its fair market value as of the closing of the Deemed Liquidation Event. Any securities shall be valued as follows:

(A) Securities that are part of a class of securities that is registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended:

(1) If traded on a national securities exchange or listed on NASDAQ, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing of the Deemed Liquidation Event;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and



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(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith and on a reasonable basis by the Board.

(B) The fair market value of securities that are not part of a class of securities that is registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, shall be as determined by the Board in good faith and on a reasonable basis, taking into account the lack of marketability of such securities, minority ownership (if applicable) and such other factors as the Board shall determine to be appropriate.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of any prospective transaction referred to in Section 2(c)(i) not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than twenty (20) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock (voting together as a single class on an as-converted to Common Stock basis).

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or, in the sole or absolute discretion of the Board, cancel such transaction, in which event the rights, preferences and privileges of the holders of Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

### 3. **Redemption.**

(a) **At the Option of Holders of Preferred Stock.** If the Corporation shall not have consummated a Qualifying IPO (as defined in Section 4(b)) or a Deemed Liquidation Event prior to the fifth anniversary of the Series B-1 Original Issue Date, the Corporation shall, upon the receipt of a written request (the "**Redemption Request**") delivered to the Corporation, at any time after the fifth (5th) anniversary of the Series C Original Issue Date by the holders of at least fifty-one percent (51%) of the then-outstanding Preferred Stock (voting together as a single class on an as-converted to Common Stock basis, provided that such Redemption Request shall also require the prior written consent of the holders of at least fifty-one percent (51%) of the then outstanding shares of Series C Preferred Stock for so long as there continues to be at least 659,000 shares of Series C Preferred Stock outstanding), redeem all of the (i) outstanding Series C Preferred Stock at the Series C Redemption Price (ii) outstanding

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Series B-1 Preferred Stock at the Series B-1 Redemption Price, (iii) outstanding Series B Preferred Stock at the Series B Redemption Price, and (iv) outstanding Series A Preferred Stock at the Series A Redemption Price, payable in eight (8) equal quarterly installments over two (2) years. The first such installment shall be due and payable on the initial redemption date set forth in the Redemption Request (each such redemption date being sometimes referred to herein as a "Redemption Date"); *provided, however*, that the initial Redemption Date shall be the later of the date that is set forth as the initial redemption date in the Redemption Request and the date that is thirty (30) days after the "Fair Market Value" of such Preferred Stock is finally determined in accordance with Section 3(b). The Series C Redemption Price, Series B-1 Redemption Price, Series B Redemption Price and Series A Redemption Price (each as defined below), as applicable, for the Preferred Stock to be redeemed shall be paid in cash on the applicable Redemption Date. Shares subject to redemption pursuant to this Section 3(a) shall be redeemed from each holder on a pro rata basis in accordance with their respective Redemption Prices; *provided however*, that if on any Redemption Date, Florida law governing distributions to shareholders prevents the Corporation from redeeming all shares of Series C Preferred Stock to be redeemed on such date, the Corporation shall ratably redeem the maximum number of shares of Series C Preferred Stock that it may redeem consistent with such law and it shall not redeem any shares of Junior Preferred Stock, and the Corporation shall redeem the remaining shares of Series C Preferred Stock as soon as it may lawfully do so under such law. Subject to the foregoing, if the Corporation redeems all shares of Series C Preferred Stock that are to be redeemed on a particular Redemption Date, but Florida law governing distributions to shareholders prevents the Corporation from redeeming all shares of Junior Preferred Stock to be redeemed on such date, the Corporation shall ratably redeem the maximum number of shares of Junior Preferred Stock that it may redeem consistent with such law, and the Corporation shall redeem the remaining shares of Junior Preferred Stock as soon as it may lawfully do so under such law.

(b) Redemption Price.

(i) The "Series C Redemption Price" shall be an amount per share of Series C Preferred Stock equal to the greater of (I) the "Fair Market Value" (as defined below) of Series C Preferred Stock, or (II) the Series C Original Purchase Price (as adjusted for stock splits, stock dividends, reclassification and the like), plus all accrued or declared but unpaid dividends thereon.

(ii) The "Series B-1 Redemption Price" shall be an amount per share of Series B-1 Preferred Stock equal to the greater of (I) the "Fair Market Value" (as defined below) of Series B-1 Preferred Stock, or (II) the Series B-1 Original Purchase Price (as adjusted for stock splits, stock dividends, reclassification and the like), plus all accrued or declared but unpaid dividends thereon.

(iii) The "Series B Redemption Price" shall be an amount per share of Series B Preferred Stock equal to the greater of (I) the "Fair Market Value" (as defined below) of Series B Preferred Stock, or (II) the Series B Original Purchase Price (as adjusted for stock splits, stock dividends, reclassification and the like), plus all accrued or declared but unpaid dividends thereon.

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(iv) The "Series A Redemption Price" shall be an amount per share of Series A Preferred Stock equal to the greater of (I) the "Fair Market Value" (as defined below) of Series A Preferred Stock, or (II) the Series A Original Purchase Price (as adjusted for stock splits, stock dividends, reclassification and the like), plus all accrued or declared but unpaid dividends thereon.

(v) "Fair Market Value" shall be the fair market value of such shares of Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock or Series C Preferred Stock, as the case may be, as established by the vote of a majority of the members of the Board, in good faith and on a reasonable basis, following such request for redemption (which Fair Market Value shall not include a discount for minority ownership interest or illiquidity), and each holder of Preferred Stock shall be notified in writing of such value upon receipt by the Corporation of a request for redemption. The Board shall make such fair market value determination and notify the holders of the Preferred Stock within thirty (30) days of the Board's receipt of the Redemption Request. If, however, the holders of (I) a majority of the Series A Preferred Stock (in the case of the valuation of shares of Series A Preferred Stock), or (II) a majority of the Series B Preferred Stock (in the case of the valuation of shares of Series B Preferred Stock), or (III) a majority of the Series B-1 Preferred Stock (in the case of the valuation of shares of Series B-1 Preferred Stock) or (IV) a majority of the Series C Preferred Stock (in the case of the valuation of shares of Series C Preferred Stock) shall give the Corporation written notice prior to the scheduled redemption that he, it or they disagree with the value placed upon the Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock or Series C Preferred Stock (as applicable), then the Corporation and (I) holders of Series A Preferred Stock (in the case of the valuation of shares of Series A Preferred Stock) and (II) holders of Series B Preferred Stock (in the case of the valuation of shares of Series B Preferred Stock) and (III) holders of Series B-1 Preferred Stock (in the case of the valuation of shares of Series B-1 Preferred Stock) and (IV) holders of Series C Preferred Stock (in the case of the valuation of shares of Series C Preferred Stock) shall attempt to agree upon a Fair Market Value. Should the Corporation and (I) holders of Series A Preferred Stock (in the case of the valuation of shares of Series A Preferred Stock) and (II) holders of Series B Preferred Stock (in the case of the valuation of shares of Series B Preferred Stock) and (III) holders of Series B-1 Preferred Stock (in the case of the valuation of shares of Series B-1 Preferred Stock) and (IV) holders of Series C Preferred Stock (in the case of the valuation of shares of Series C Preferred Stock) be unable to agree during the twenty (20) day period immediately following the giving of the written notice of such disagreement as to the Fair Market Value without the employment of appraisers, then they shall each select an appraiser experienced in the business of evaluating or appraising the market value of stock. The two (2) appraisers so selected (the "Initial Appraisers") shall, on or prior to the scheduled Redemption Date, appraise such shares to be redeemed as of the date of the scheduled redemption. The appraisers making an appraisal pursuant to this Section 3 shall base such determination upon all considerations that such appraisers determine to be relevant but shall assume: (x) no discounts for minority ownership interest, and (y) that any contractual or applicable federal or state securities law restrictions on transferability are not applicable. If the difference between the resulting appraisals is not greater than twenty percent (20%), then the average of the appraisals shall be deemed the Fair Market Value; otherwise, the Initial Appraisers shall select an additional appraiser (the "Additional Appraiser"), who shall be experienced in a manner similar to the Initial Appraisers. If they fail to select such Additional Appraiser as provided above, then either the Corporation or (I) holders

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of Series A Preferred Stock (in the case of the valuation of shares of Series A Preferred Stock) or (II) holders of Series B Preferred Stock (in the case of the valuation of shares of Series B Preferred Stock) or (III) holders of Series B-1 Preferred Stock (in the case of the valuation of shares of Series B-1 Preferred Stock) or (IV) holders of Series C Preferred Stock (in the case of the valuation of shares of Series C Preferred Stock) shall immediately apply, after written notice to the other, to any judge of any court of general jurisdiction for the appointment of such Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of such series of Preferred Stock, and such value shall be the Fair Market Value. The Additional Appraiser shall forthwith give written notice of his determination to the Corporation and the holders of Preferred Stock. Each party shall pay the expenses and fees of the appraiser selected by him or it, and, if an Additional Appraiser is employed, the party who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

(c) **Notice of Redemption.** At least twenty (20) days prior to each Redemption Date, written notice shall be mailed, postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Preferred Stock at the address last shown on the records of the Corporation for such holder (or at the address given by the holder to the Corporation for the purpose of notice or if no such address appears or is given at the place where the principal executive office of the Corporation is located), notifying such holder of the redemption to be effected, specifying the Redemption Date, the number of shares to be redeemed, the applicable Redemption Price and the place at which payment may be obtained upon surrender of their share certificates (the "**Redemption Notice**"). The Redemption Notice shall call upon such holder to surrender to the Corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed. Except as provided in Section 3(d), on or after the close of business on the Redemption Date, each holder of Preferred Stock shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice. Thereupon, the Corporation shall, in accordance with Section 3(a), tender the applicable Redemption Price of such shares to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled.

(d) **Cessation of Rights.** From and after each Redemption Date, unless there has been a default in payment of the Redemption Price, all dividends, if any, on the Preferred Stock to be redeemed on such Redemption Date shall cease to accrue, all rights of the holders of such shares as holders of Preferred Stock (except the right to receive the applicable Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of Preferred Stock on the applicable Redemption Date are insufficient to redeem the Preferred Stock to be redeemed on such date, then those funds that are legally available shall be used to redeem the maximum possible number of shares of Preferred Stock ratably among such holders in proportion to the amount each such holder otherwise would be entitled to receive with respect to such shares. Any Preferred Stock not redeemed shall remain outstanding and entitled to all the privileges, rights and preferences

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provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Preferred Stock, such funds shall immediately be set aside for the redemption of the balance of the shares that the Corporation has become obligated to redeem on the applicable Redemption Date pursuant to this Section 3 but has not redeemed, payable in accordance with the terms of this Section 3(d), with interest at the per annum rate announced by Bank of America, N.A. in Tampa, Florida, or any successor thereto, at its prime lending rate plus two percent (2%) per annum for the period of each delay. In addition to the foregoing, if the Corporation does not redeem all of the Preferred Stock on the applicable Redemption Date, the holders of the Preferred Stock shall be entitled to those specific rights to elect members to the Board as described in Section 5(c).

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights");

(a) **Right to Convert.** Subject to Section 4(c), each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, and on or prior to the Redemption Date, if any (as may have been fixed in any Redemption Notice with respect to any Series C Preferred Stock pursuant to Section 3 above), at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the sum of the applicable Series C Original Purchase Price for such share by the applicable Series C Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series C Conversion Price for each share of Series C Preferred Stock shall be One Dollar and Nineteen Cents (\$1.19) (as adjusted from time to time, the "Series C Conversion Price"). The Series C Conversion Price for each share of Series C Preferred Stock shall be subject to adjustment as set forth in Section 4(e). Subject to Section 4(c), each share of Series B-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, and on or prior to the Redemption Date, if any (as may have been fixed in any Redemption Notice with respect to any Series B-1 Preferred Stock pursuant to Section 3 above), at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the sum of the applicable Series B-1 Original Purchase Price for such share by the applicable Series B-1 Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series B-1 Conversion Price for each share of Series B-1 Preferred Stock shall be One Dollar and Nineteen Cents (\$1.19) (as adjusted from time to time, the "Series B-1 Conversion Price"). The Series B-1 Conversion Price for each share of Series B-1 Preferred Stock shall be subject to adjustment as set forth in Section 4(e). Subject to Section 4(c), each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, and on or prior to the Redemption Date, if any (as may have been fixed in any Redemption Notice with respect to any Series B Preferred Stock pursuant to Section 3 above), at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the sum of the applicable Series B Original Purchase Price for such share by the applicable Series B Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series B Conversion Price for each share of Series B Preferred Stock shall be Eighty Cents (\$0.80) (as adjusted from time to time, the "Series B Conversion Price").

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The Series B Conversion Price for each share of Series B Preferred Stock shall be subject to adjustment as set forth in Section 4(e). Subject to Section 4(c), each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, and on or prior to the Redemption Date, if any (as may have been fixed in any Redemption Notice with respect to any Series A Preferred Stock pursuant to Section 3 above), at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the sum of the applicable Series A Original Purchase Price for such share by the applicable Series A Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series A Conversion Price for each share of Series A Preferred Stock shall be One Dollar (\$1.00) (as adjusted from time to time, the "Series A Conversion Price", and generally with respect to the Series B-1 Conversion Price and the Series Conversion Price, the "Conversion Price"). The Series A Conversion Price for each share of Series A Preferred Stock shall be subject to adjustment as set forth in Section 4(e). After giving effect to adjustments pursuant to Section 4(e) prior to the date of the filing of these Fourth Amended and Restated Articles of Incorporation, as of such date, the Series C Conversion Price is equal to \$1.19 per share, the Series B-1 Conversion Price is equal to \$1.19 per share, the Series B Conversion price is equal to \$0.80 per share, and the Series A Conversion Price is equal to \$0.80 per share.

(b) Automatic Conversion for Preferred Stock. Each share of Series C Preferred Stock shall automatically be converted into such number of shares of Common Stock as is determined by dividing an amount equal to the applicable Series C Original Purchase Price by the applicable Series C Conversion Price at the time in effect for such share immediately upon the earlier of (A) the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act") at a total public offering price per share (prior to underwriters' commissions and expenses) of not less than \$5.00 per share and which results in aggregate net cash proceeds to the Corporation of not less than \$20,000,000 (the "Qualifying IPO") or (B) in the case of Series C Preferred Stock, the date specified by written consent or agreement of the holders of at least a majority of the then-outstanding Series C Preferred Stock. Each share of Series B-1 Preferred Stock shall automatically be converted into such number of shares of Common Stock as is determined by dividing an amount equal to the applicable Series B-1 Original Purchase Price by the applicable Series B-1 Conversion Price at the time in effect for such share immediately upon the earlier of (A) the Qualifying IPO or (B) in the case of Series B-1 Preferred Stock, the date specified by written consent or agreement of the holders of at least a majority of the then-outstanding Series B-1 Preferred Stock. Each share of Series B Preferred Stock shall automatically be converted into such number of shares of Common Stock as is determined by dividing an amount equal to the applicable Series B Original Purchase Price by the applicable Series B Conversion Price at the time in effect for such share immediately upon the earlier of (A) the Qualifying IPO or (B) in the case of Series B Preferred Stock, the date specified by written consent or agreement of the holders of at least a majority of the then-outstanding Series B Preferred Stock. Each share of Series A Preferred Stock shall automatically be converted into such number of shares of Common Stock as is determined by dividing an amount equal to the applicable Series A Original Purchase Price by the applicable Series A Conversion Price at the time in effect for such share immediately upon the earlier of (A) the Qualifying IPO or (B) in the case of Series A Preferred Stock, the date specified by written

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consent or agreement of the holders of at least a majority of the then-outstanding Series A Preferred Stock.

(c) **Mechanics of Conversion.** Except as provided in Section 4(b), before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of the transfer agent for such Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of such Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of Preferred Stock shall not be deemed to have converted Preferred Stock until immediately prior to the closing of such sale of securities. In addition, any conversion pursuant to Section 4(a) hereof may be conditioned by the holders of Preferred Stock upon the happening of a specific event, in which event the person(s) entitled to receive Common Stock issuable upon such conversion of Preferred Stock shall not be deemed to have converted Preferred Stock until immediately prior to the happening of such event. Upon the conversion of Series C Preferred Stock, the Corporation shall pay all accrued or declared but unpaid dividends in either cash or, at the election of the holder of the shares of Series C Preferred Stock then being converted, in additional shares of Common Stock at the then-current Series C Conversion Price. Subject to the provisions of Section 1, upon the conversion of Series B-1 Preferred Stock, the Corporation shall pay all accrued or declared but unpaid dividends in either cash or, at the election of the holder of the shares of Series B-1 Preferred Stock then being converted, in additional shares of Common Stock at the then-current Series B-1 Conversion Price. Subject to the provisions of Section 1, upon the conversion of Series B Preferred Stock, the Corporation shall pay all accrued or declared but unpaid dividends in either cash or, at the election of the holder of the shares of Series B Preferred Stock then being converted, in additional shares of Common Stock at the then-current Series B Conversion Price. Subject to the provisions of Section 1, upon the conversion of Series A Preferred Stock, the Corporation shall pay all accrued or declared but unpaid dividends in either cash or, at the election of the holder of the shares of Series A Preferred Stock then being converted, in additional shares of Common Stock at the then-current Series A Conversion Price.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances.**

(i) **Special Definitions.** For purposes of these Fourth

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Amended and Restated Articles of Incorporation (the "Articles") the following definitions apply:

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

(B) "Series A Original Issue Date" shall mean the date on which the first share of Series A Preferred Stock was issued.

(C) "Series B Original Issue Date" shall mean the date on which the first share of Series B Preferred Stock was issued.

(D) "Series B-1 Original Issue Date" shall mean the date on which the first share of Series B-1 Preferred Stock was issued.

(E) "Series C Original Issue Date" shall mean the date on which the first share of Series C Preferred Stock was issued.

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

(G) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the Series A Original Issue Date, other than the following (which shall be referred to as "Excluded Securities"):

(1) Common Stock issued or issuable upon conversion of Preferred Stock;

(2) shares of Common Stock issued or issuable since the date of incorporation of the Corporation to employees or directors of, or consultants to, the Corporation, but only to the extent any such grant is approved by Board of Directors of the Corporation or a committee approved by the Board of Directors of the Corporation, and such grant is made pursuant to a plan approved by the Board of Directors of the Corporation and the shareholders (the "Employee Option Shares");

(3) shares of capital stock issued or issuable for which adjustment of the Conversion Price is made pursuant to Section 4(e);

(4) shares of capital stock issued or issuable as a dividend on Preferred Stock; or

(5) shares of Common Stock issued or issuable in a Qualifying IPO registered under the Securities Act in which all outstanding Preferred Stock will be converted into Common Stock.



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(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the applicable Series C Conversion Price for Series C Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the highest applicable Series C Conversion Price for any such shares of Series C Preferred Stock in effect on the date of, and immediately prior to such issue. Any provision herein to the contrary notwithstanding, no adjustment in the applicable Series B-1 Conversion Price for Series B-1 Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the highest applicable Series B-1 Conversion Price for any such shares of Series B-1 Preferred Stock in effect on the date of, and immediately prior to such issue. Any provision herein to the contrary notwithstanding, no adjustment in the applicable Series B Conversion Price for Series B Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the highest applicable Series B Conversion Price for any such shares of Series B Preferred Stock in effect on the date of, and immediately prior to such issue. Any provision herein to the contrary notwithstanding, no adjustment in the applicable Series A Conversion Price for Series A Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the highest applicable Series A Conversion Price for any such shares of Series A Preferred Stock in effect on the date of, and immediately prior to such issue.

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

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

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any decrease in the consideration payable to the Corporation, or increase in the number of shares of Common Stock issuable, upon

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the exercise, conversion or exchange thereof, or if any such decrease or increase shall otherwise be made, the applicable Conversion Price of each share of Preferred Stock upon and following the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such decrease or increase becoming effective, be recomputed to reflect such decrease or increase as if such Options or Convertible Securities had initially been issued upon such revised terms or, if no adjustment to such Conversion Price has previously been made to reflect the issuance of such Options or Convertible Securities, as if such Options or Convertible Securities were then being issued on such revised terms (provided, however, that no such adjustment of the Conversion Price of Preferred Stock shall affect Common Stock previously issued upon conversion of Preferred Stock);

(C) upon the expiration of any such Options or rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the applicable Conversion Price of each share of Preferred Stock, shall, upon such expiration, be recomputed as if:

(1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such expired Options or the conversion or exchange of such expired Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such expired Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such expired Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange;

(2) in the case of expired Options for Convertible Securities or Preferred Stock, only the Convertible Securities or Preferred Stock, if any, actually issued upon the exercise thereof were issued at the time of issue of such expired Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such expired Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(iv)) upon the issue of the Convertible Securities or Preferred Stock with respect to which such expired Options were actually exercised; and

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

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation at any time after the Series A Original Issue Date shall issue Additional Shares of Common Stock (including

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Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the highest applicable Series A Conversion Price in effect on the date of and immediately prior to such issue, the Series A Conversion Price shall be reduced, concurrently with such issuance, to a price (calculated to the nearest \$0.0001 cent) equal to the consideration per share received by the Corporation upon such issuance of Additional Shares of Common Stock. In the event the Corporation at any time after the Series B Original Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the Series B Conversion Price in effect immediately prior to such issue, the Series B Conversion Price shall be reduced, concurrently with such issuance, to a price (calculated to the nearest \$0.0001 cent) equal to the consideration per share received by the Corporation upon such issuance of Additional Shares of Common Stock. In the event the Corporation at any time after the Series B-1 Original Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the Series B-1 Conversion Price in effect immediately prior to such issue, the Series B-1 Conversion Price shall be reduced, or in the event the Corporation at any time after the Series C Original Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the Series C Conversion Price in effect immediately prior to such issue, the applicable Conversion Price for the Series B-1 Preferred Stock and the Series C Preferred Stock shall each be reduced concurrently with such issuance, to a price (calculated to the nearest \$0.0001 cent) determined in accordance with the following formula (the "Weighted Average Formula"):

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

- a. "CP<sub>2</sub>" shall, with respect to the Series B-1 Preferred Stock, mean the applicable Series B-1 Conversion Price for Series B-1 Preferred Stock in effect immediately after such issue of Additional Shares of Common Stock and with respect to the Series C Preferred Stock, mean the applicable Series C Conversion Price for Series C Preferred Stock in effect immediately after such issue of Additional Shares of Common Stock;
- b. "CP<sub>1</sub>" shall, with respect to the Series B-1 Preferred Stock, mean the applicable Series B-1 Conversion Price for Series B-1 Preferred Stock in effect immediately prior to such issue of Additional Shares of Common Stock and with respect to the Series C Preferred Stock, mean the applicable Series C Conversion Price for Series C Preferred Stock in effect immediately prior to such issue of Additional Shares of Common Stock;

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c. "A" shall, with respect to the Series B-1 Preferred Stock, mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Series B-1 Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue), and with respect to the Series C Preferred Stock, mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Series C Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

d. "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to  $CP_1$  (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by  $CP_1$ ); and

e. "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(v) **Determination of Consideration.** For purposes of this Section 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) **Cash and Property.** Such consideration shall:

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

(2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith and on a reasonable basis by the Board; provided, however, that no value shall be attributable to any service performed by any employee, officer or director of the Corporation or other person for the benefit of the Corporation; and

(3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the

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Corporation for consideration which covers both, be the proportion of such consideration so received with respect to such Additional Shares of Common Stock, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board.

(B) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

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

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

(C) **Expenses.** In the event the Corporation pays or incurs expenses, commissions or compensation, or allows concessions or discounts to underwriters, dealers or others performing similar services in connection with such issue of Additional Shares of Common Stock, in an aggregate amount in excess of five percent (5%) of the aggregate consideration received by the Corporation for such issue, as determined above, the consideration received by the Corporation shall be computed as provided above after deducting the aggregate amount of such expenses in excess of five percent (5%) from the aggregate consideration received by the Corporation for such issue.

(e) **Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock.** If the Corporation at any time or from time to time after the Series A Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Series A Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. If the Corporation at any time or from time to time after the Series B Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of

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shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Series B Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. If the Corporation at any time or from time to time after the Series B-1 Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Series B-1 Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. If the Corporation at any time or from time to time after the Series C Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Series C Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate.

(f) **Adjustments for Other Distributions.** If the Corporation at any time or from time to time makes, or files a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities or assets of the Corporation other than shares of Common Stock, then and, in each such event, provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities or assets of the Corporation which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities or assets receivable by them as aforesaid during such period, subject to all other adjustment called for during such period under this Section 4 with respect to the rights of the holders of Preferred Stock.

(g) **Adjustments for Reclassification and Reorganization.** If the Common Stock issuable upon conversion of Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 4(c) above or a merger or other reorganization referred to in Section 2(d)(i), above), the applicable Conversion Price of each share of Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Preferred Stock shall be convertible into, in lieu of the

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number of shares of Common Stock which the holders would otherwise have been entitled to receive, the kind and number of shares of such other class or classes of stock resulting from that reorganization or reclassification to which a holder of the number of shares of Common Stock deliverable upon conversion of Preferred Stock would have been entitled upon that reorganization or reclassification. The provisions of this Section 4(c) shall apply to successive reorganizations or reclassifications.

(h) **No Impairment.** The Corporation will not, by amendment of these Articles or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(i) **Certificates as to Adjustments.** Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each Holder of Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer 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 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price for such series of Preferred Stock at the time in effect, 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 such series of Preferred Stock.

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

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

(B) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days prior written notice of the date when the same shall take

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place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

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

(l) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Articles.

(m) **Fractional Shares.** No fractional share shall be issued upon the conversion of any Preferred Stock. All shares of Common Stock or Preferred Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock or Preferred Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board).

(n) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of Preferred Stock shall be deemed given five (5) days after such notice is deposited in the United States mail, postage prepaid, or upon receipt if sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at his address or facsimile number appearing in the records of the Corporation.

(o) **Miscellaneous.** No adjustment in any Conversion Price need be made if such adjustment would result in a change in such Conversion Price of less than \$0.0001. Any adjustment of less than \$0.0001 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.0001 or more in such Conversion Price.

(p) **Waiver of Adjustment of Conversion Prices.** Notwithstanding anything herein to the contrary, the operation of, and any adjustment of the applicable Conversion Price of Preferred Stock pursuant to Section 4 of this Article II(B) may be



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waived with respect to any specific share or shares of such Preferred Stock, either prospectively or retroactively and either generally or in a particular instance by a writing executed by the registered holder of such share or shares. Any waiver pursuant to this subsection 4(p) shall bind all future holders of shares of such Preferred Stock for which such rights have been waived. In the event that a waiver of adjustment of the Series A Conversion Price under this subsection 4(p) results in a different Series A Conversion Price for Series A Preferred Stock, the Secretary of the Corporation shall maintain a written ledger identifying the Series A Conversion Price for each share of Series A Preferred Stock. Such information shall be made available to any stockholder upon request. For the purposes of Section 4(d)(iv), if different shares of Series A Preferred Stock have more than one Series A Conversion Price as a result of a waiver of adjustment of Series A Conversion Price under this subsection 4(p), the applicable Series A Conversion Price for triggering any future adjustment of the Series A Conversion Price of shares of Series A Preferred Stock which have not had such adjustment waived shall be the lowest Series A Conversion Price in effect with respect to such shares of Series A Preferred Stock. In the event that a waiver of adjustment of the Series B Conversion Price under this subsection 4(p) results in a different Series B Conversion Price for Series B Preferred Stock, the Secretary of the Corporation shall maintain a written ledger identifying the Series B Conversion Price for each share of Series B Preferred Stock. Such information shall be made available to any stockholder upon request. For the purposes of Section 4(d)(iv), if different shares of Series B Preferred Stock have more than one Series B Conversion Price as a result of a waiver of adjustment of Series B Conversion Price under this subsection 4(p), the applicable Series B Conversion Price for triggering any future adjustment of the Series B Conversion Price of shares of Series B Preferred Stock which have not had such adjustment waived shall be the lowest Series B Conversion Price in effect with respect to such shares of Series B Preferred Stock. In the event that a waiver of adjustment of the Series B-1 Conversion Price under this subsection 4(p) results in a different Series B-1 Conversion Price for Series B-1 Preferred Stock, the Secretary of the Corporation shall maintain a written ledger identifying the Series B-1 Conversion Price for each share of Series B-1 Preferred Stock. Such information shall be made available to any stockholder upon request. For the purposes of Section 4(d)(iv), if different shares of Series B-1 Preferred Stock have more than one Series B-1 Conversion Price as a result of a waiver of adjustment of Series B-1 Conversion Price under this subsection 4(p), the applicable Series B-1 Conversion Price for triggering any future adjustment of the Series B-1 Conversion Price of shares of Series B-1 Preferred Stock which have not had such adjustment waived shall be the lowest Series B-1 Conversion Price in effect with respect to such shares of Series B-1 Preferred Stock. In the event that a waiver of adjustment of the Series C Conversion Price under this subsection 4(p) results in a different Series C Conversion Price for Series C Preferred Stock, the Secretary of the Corporation shall maintain a written ledger identifying the Series C Conversion Price for each share of Series C Preferred Stock. Such information shall be made available to any stockholder upon request. For the purposes of Section 4(d)(iv), if different shares of Series C Preferred Stock have more than one Series C Conversion Price as a result of a waiver of adjustment of Series C Conversion Price under this subsection 4(p), the applicable Series C Conversion Price for triggering any future adjustment of the Series C Conversion Price of shares of Series C Preferred Stock which have not had such adjustment waived shall be the lowest Series C Conversion Price in effect with respect to such shares of Series C Preferred Stock.

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5. **Voting Rights.**

(a) **Generally.** The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock as a single class or group on an as-converted basis, with respect to any matter upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) **Election of Directors.** The authorized number of directors shall be set forth in the Corporation's Bylaws, but in any event shall not be less than five (5) directors. Of the authorized number of members on the Board, (i) so long as at least 210,110 shares of Series B-1 Preferred Stock are outstanding, the holders of a majority of the issued and outstanding Series B-1 Preferred Stock (voting together as a single class on as-converted to Common Stock basis) shall be entitled to elect one (1) director (and to fill any vacancy with respect thereto (the "B-1 Director")); (ii) the holders of a majority of the issued and outstanding Series B Preferred Stock and Series A Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect two (2) directors (and to fill any vacancy with respect thereto) who shall be an individual who is not an officer or employee of the Corporation (the "Preferred Directors"), and (iii) the holders of a majority of the issued and outstanding Preferred Stock and Common Stock, voting together as a single class on an as-converted basis, shall be entitled to elect two (2) directors (and to fill any vacancy with respect thereto) (the "Joint Directors"). Any director who shall have been elected by a specified group of shareholders may be removed during the aforesaid term of office, either for or without cause, by and only by, the affirmative vote of the holders of a majority of the shares of such specified group, given at a special meeting of such shareholders duly called or by an action by written consent for that purpose.

(c) **Redemption Default.**

(i) Notwithstanding the foregoing, or anything to the contrary in this Section 5 or the Bylaws of the Corporation, if the Corporation fails to redeem any shares of Preferred Stock as required by these Articles, whether or not payment for such redemption is legally permissible or is prohibited by any agreement to which the Corporation is subject in accordance with Section 3 (a "Redemption Default"), unless and until the remaining shares of Preferred Stock have been redeemed in accordance with the terms of Section 3(d), the Board shall consist solely of the three (3) Additional Directors (as defined below) and the two (2) Joint Directors and shall be elected as follows:

(A) the holders of the remaining shares of Preferred Stock (voting together as a single class on as-converted to Common Stock basis) shall have the exclusive and special right (in addition to any other voting rights), voting together as a

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single series and a single class, on an as-converted basis, to appoint to the Board of and elect, at any annual meeting of shareholders, at a special meeting held in place thereof, at a special meeting of the holders of such shares of Preferred Stock called as hereinafter provided, or by written consent, three (3) Directors (such additional Director(s), the "Additional Director(s)"), to remove from office such directors, to fill any vacancy caused by the resignation or death of such directors and to fill any vacancy (by the affirmative vote or written consent of the holders of a majority of Preferred Stock) caused by the removal of such directors; and

(B) the holders of a majority of the issued and outstanding Preferred Stock and Common Stock, voting together as a single class on an as-converted basis, shall be entitled to elect two (2) Joint Directors.

(ii) At any time after a Redemption Default has occurred and is continuing, the secretary of the Corporation shall, upon the written request of holders of at least twenty percent (20%) of the shares of Preferred Stock then-outstanding addressed to him or her at the principal executive offices of the Corporation, call a special meeting of the holders of the shares of Preferred Stock for the purpose of electing such Additional Director(s), such meeting to be held at the place determined by such holders of a majority of such shares of Preferred Stock, as soon as practicable after the receipt of such request. If such special meeting shall not be called by the secretary within three (3) days after receipt of such request, then the holders of at least 20% of the shares of Preferred Stock then outstanding may designate in writing one of their number to call such a meeting at the place designated by such holders and upon the notice above provided, and any person so designated for that purpose shall have access to the stock records of the Corporation for such purpose.

(iii) Notwithstanding anything herein or pursuant to agreement or the Bylaws to the contrary, at any meeting at which the holders of shares of Preferred Stock shall be entitled to elect Additional Director(s) as provided above, the holders of not less than a majority of the then-outstanding shares of Preferred Stock (as calculated on as-converted basis) present in person or by proxy shall constitute a quorum for the election of such Additional Director(s), and, except as otherwise required by law, the vote of the holders of shares representing not less than a majority of the then-outstanding shares of Preferred Stock, voting together as a single series on an as-converted basis, so present at any such meeting at which there shall be such a quorum shall be sufficient to elect such Additional Director(s). The persons so elected as Additional Director(s) by such holders shall hold office until their successors shall have been elected by such holders or until all shares of Preferred Stock have been redeemed in accordance with the provisions of Section 3(d). If a vacancy occurs in a directorship elected by such holders, then a special meeting shall immediately be called as provided for in Section 5(c)(ii) above for the purpose of filling such vacancy.

(iv) At any meeting at which the holders of shares of Preferred Stock shall be entitled to elect Additional Director(s) as provided above, or any adjournment thereof in the absence of a quorum of the holders of the shares of Preferred Stock, the holders of shares representing a majority of such shares of Preferred Stock (as calculated on an as-converted basis) present in person or by proxy shall have power to adjourn from time to time the meeting for the election of the directors which they are entitled to elect pursuant to this

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Section 5(c)(iv), without notice other than announcement at the meeting, until a quorum shall be present.

(v) At any time after the holders of the shares of Preferred Stock shall have become entitled to elect Additional Director(s) pursuant to this Section 5(c), such holders may do so by a consent in writing setting forth the action so taken, and signed by the holders of not less than a majority of the then-outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis).

6. Restrictions and Limitations.

(a) In addition to any other rights provided by law, so long as any shares of Preferred Stock remain outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding Preferred Stock (voting together as a single class on as-converted to Common Stock basis) the Corporation shall not, directly or indirectly:

(i) approve, adopt or file any amendment to the Articles designating the preferences, limitations and relative rights of any series of Preferred Stock, or engage in any action that would alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of any series of Preferred Stock, or amend, repeal or waive any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws;

(ii) increase or decrease the authorized number of shares of Preferred Stock or Common Stock or issue any capital stock having liquidation or dividend rights senior to Preferred Stock;

(iii) authorize or issue any Additional Shares of Common Stock, Convertible Securities, or Options other than Employee Option Shares;

(iv) create or increase, or authorize the creation or increase of the authorized amount of any additional class or series of shares of stock, or any obligation or security convertible into any additional class or series of shares of stock, regardless of whether any such creation, authorization or increase shall be by means of amendment to the Articles, or by merger, consolidation or otherwise, in each case with rights senior to or on a parity with the rights of the Series A Preferred Stock or the Stock Series B Preferred Stock;

(v) pay any dividends or other distribution on any capital stock;

(vi) purchase, redeem or otherwise acquire for value any shares of any class of its capital stock or cause or permit any employee stock ownership plan, including any Employee Stock Ownership Plan as defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, to purchase shares of any class of its capital stock, except for the redemption of Preferred Stock pursuant to the terms of these Articles;

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Liquidation Event; (vii) authorize, or take any action to effect, a Deemed

subsidary; (viii) sell any subsidiary or any capital stock held in any

(ix) create, incur, assume or suffer to exist any indebtedness which would cause the total indebtedness of the Corporation to exceed \$50,000 outstanding at any time or incur, assume or suffer to exist any guarantees of debt or other obligations of any entity;

(x) acquire, invest in or loan to any entity;

Corporation or its business; (xi) voluntarily liquidate, dissolve or wind up the

(xii) increase the size of the Board;

the Corporation; (xiii) increase the compensation of any senior executive of

(xiv) take any vote, authorize or take any other action that could materially effect, alter or change the rights, preferences or privileges of the Preferred Stock; or

(xv) amend the provisions of this Section 6(a).

(b) In addition to the rights set forth in Section 6(a), so long as any shares of Series B-1 Preferred Stock remain outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding Series B-1 Preferred Stock, the Corporation shall not, directly or indirectly:

(i) amend, alter or repeal any provision of the Articles in a manner that disproportionately adversely affects the powers, preferences or rights of the Series B-1 Preferred Stock;

(ii) create, or authorize the creation of, any additional class or series of capital stock unless the same ranks junior to the Series B-1 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 B-1 Preferred Stock or increase the authorized number of shares of any additional class or series of capital stock unless the same rank junior to the Series B-1 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

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(iii) 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 (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) 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 (iv) as approved by the Board of Directors, including the approval of the B-1 Director.

(c) In addition to the rights set forth in Section 6(a), so long as any shares of Series C Preferred Stock remain outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding Series C Preferred Stock, the Corporation shall not, directly or indirectly:

(i) amend, alter or repeal any provision of the Articles in a manner that disproportionately adversely affects the powers, preferences or rights of the Series C Preferred Stock;

(ii) create, or authorize the creation 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; or

(d) 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 (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) 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 (iv) as approved by the Board of Directors, including the approval of the B-1 Director.

7. **Status of Redeemed or Converted Stock.** In the event any Preferred Stock shall be redeemed or converted pursuant to Section 3 or 4 hereof, the shares so redeemed or converted shall be cancelled and shall not be issuable by the Corporation. The Articles shall be appropriately amended to effect any corresponding reduction in the Corporation's authorized capital stock.