

SEP 15 2005 11:00 AM

FOLEY LARDNER

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BASIC AMENDMENT

PINNACLE COMMUNICATIONS INTERNATIONAL, INC.

Certificate of Status	0
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DIVISION OF CORPORATIONS

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Amend

FAX AUDIT NO.: H05000219488

**AMENDMENT TO ARTICLES OF INCORPORATION OF
PINNACLE COMMUNICATIONS INTERNATIONAL, INC.
CREATING 750,000 SHARES OF
SERIES D PREFERRED STOCK**

1. Pursuant to the authority expressly vested in the Board of Directors of the Corporation by Section 4.8 of the Articles of Incorporation, as amended, of the Corporation (the "Charter") and Section 607.0602 of the FBCA, the Board of Directors of the Corporation, by resolutions duly adopted on March 16, 2005, has classified 750,000 shares of the authorized but unissued Preferred Stock, par value \$.001 per share ("Preferred Stock"), as a separate series of Preferred Stock, authorized the issuance of a maximum of 750,000 shares of such series of Preferred Stock, set the preferences, voting powers, restrictions, limitations as to dividends, and other terms and conditions of such series of Preferred Stock, and the consideration and other terms and conditions upon which such shares of such series of Preferred Stock are to be issued. Shareholder approval was not required under the Charter with respect to such designation.

The series of Preferred Stock of the Corporation created by the resolutions duly adopted by the Board of Directors of the Corporation shall have the following designation, number of shares, preferences, voting powers, restrictions, limitations as to dividends, and other terms and conditions.

1.1 **Series D Preferred Stock.** Seven Hundred Fifty Thousand (750,000) of the authorized shares of Preferred Stock are designated as shares of Series D Preferred Stock. The powers, preferences, and rights of the shares of the Series D Preferred Stock are set forth below.

1.1.1 **Participating Dividends.** In the event that the Corporation declares or pays any dividends upon the Common Stock (whether payable in cash, securities or other property) other than dividends payable solely in shares of Common Stock, the Corporation also shall declare and pay to the holders of the Series D Preferred Stock at the same time that it declares and pays such dividends to the holders of the Common Stock, the Series B Preferred Stock and the Series C Preferred Stock, the dividends which would have been declared and paid with respect to the Common Stock issuable upon conversion of the Series D Preferred Stock had all of the outstanding Series D Preferred Stock been converted immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined. In the event that the Corporation declares or pays any dividends upon the Series D Preferred Stock (whether payable in cash, securities or other property) other than dividends payable solely in shares of Series D Preferred Stock, the Corporation shall also declare and pay dividends to the holders of the Common Stock, the Series B Preferred Stock and the Series C Preferred Stock at the same time that it declares and pays such dividends to the holders of the Series D Preferred Stock.

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1.1.2 Liquidation

(a) **Payment Upon Liquidation.** Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), the holders of Series D Preferred Stock shall be treated *pari passu* with the holders of the Corporation's Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock. Before any payments shall be made to the holders of Common Stock, an amount equal to \$4.00 per share of Series D Preferred Stock (as adjusted for stock splits, stock dividends, combinations, or similar recapitalizations), plus any declared but unpaid dividends shall be paid to holders of Series D Preferred Stock.

If upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid under this Section 1.1.2 or under the terms of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, then the entire assets available to be distributed to the Corporation's stockholders shall be distributed, *pro rata*, among such holders based upon the aggregate Liquidation Value (plus all accrued and unpaid dividends) of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock held by each such holder.

(b) **General Provisions.** Not less than sixty (60) days prior to the payment date stated therein, the Corporation shall mail written notice of any such liquidation, dissolution or winding up to each record holder of Series D Preferred Stock, setting forth in reasonable detail the amount of proceeds to be paid with respect to each share of the Series D Preferred Stock and each share of Common Stock in connection with such liquidation, dissolution or winding up. Neither the consolidation or merger of the Corporation into or with any other entity or entities (whether or not the Corporation is the surviving entity), nor the sale or transfer by the Corporation of all or any part of its assets, nor the reduction of the capital stock of the Corporation nor any other form of recapitalization or reorganization affecting the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 1.1.2(b).

1.1.3 Conversion.

(a) [Intentionally left blank]

(b) **Events of Conversion.**

(i) **Mandatory Conversion.** All outstanding shares of the Series D Preferred Stock shall be automatically converted into shares of Common Stock, at the then effective Conversion Price, upon a Public Offering.

(ii) **Optional Conversion.** At any time between the date of a Sale Notice and until the consummation of a Sale of the Corporation, any holder of Series D Preferred Stock may convert all or any portion of the Series D Preferred Stock

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(including any fraction of a share) held by such holder into the number of shares of Conversion Stock computed by multiplying the shares of Series D Preferred Stock to be converted by the Purchase Price per share, and dividing the result by the then effective Conversion Price. Notwithstanding anything contained herein to the contrary, the holders of the Series D Preferred Stock shall not be entitled to convert shares of Series D Preferred Stock into shares of Common Stock except as expressly provided in this Section 1.13(b).

(c) Conversion Procedure.

(i) Except as otherwise provided herein, each conversion of Series D Preferred Stock shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series D Preferred Stock to be converted have been surrendered for conversion at the principal office of the Corporation. At the time any such conversion has been effected, the rights of the holder of the shares converted as a holder of Series D Preferred Stock shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Conversion Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Conversion Stock represented thereby.

(ii) Notwithstanding any other provision contained herein, if a conversion of Series D Preferred Stock shall be made in connection with a Public Offering or Sale of the Corporation, the conversion of any shares of Series D Preferred Stock shall be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated.

(iii) As soon as possible after a conversion has been effected, the Corporation shall deliver to the converting holder:

(1) a certificate or certificates representing the number of shares of Conversion Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified; and

(2) a certificate representing any shares of Series D Preferred Stock which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(iv) If for any reason the Corporation is unable to pay any portion of any declared and unpaid dividends on the Series D Preferred Stock to be converted, such dividends shall be paid as a note or shall be paid in cash as soon as practicable for the Corporation to pay such dividends.

(v) The issuance of certificates for shares of Conversion Stock upon conversion of Series D Preferred Stock shall be made without

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charge to the holders of such Series D Preferred Stock for any issuance tax with respect thereto, or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Conversion Stock. Upon conversion of each share of Series D Preferred Stock, the Corporation shall take all such actions as are necessary in order to ensure that the Conversion Stock issuable with respect to such conversion shall be validly issued, fully paid and non-assessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof.

(vi) The Corporation shall not close its books against the transfer of Series D Preferred Stock or of Conversion Stock issued or issuable upon conversion of Series D Preferred Stock in any manner which interferes with the timely conversion of Series D Preferred Stock. The Corporation shall assist and cooperate with any holder of shares of the Series D Preferred Stock required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of Shares hereunder (including, without limitation, making any filings required to be made by the Corporation).

(vii) The Corporation at all times shall reserve and keep available out of its authorized but unissued shares of Conversion Stock, solely for the purpose of issuance upon the conversion of the Series D Preferred Stock, such number of shares of Conversion Stock issuable upon the conversion of all outstanding Series D Preferred Stock. All shares of Conversion Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and non-assessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of Conversion Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Conversion Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action which would cause the number of authorized but unissued shares of Conversion Stock to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Series D Preferred Stock.

(viii) If any fractional interest in a share of Conversion Stock would, except for the provisions of this subparagraph, be delivered upon any conversion of the Series D Preferred Stock, the Corporation, in lieu of delivering the fractional share therefore, shall pay an amount to the holder thereof equal to the Market Price of such fractional interest as of the date of conversion.

(d) Conversion Price.

(i) The Conversion Price shall be \$4.00. In order to prevent dilution of the conversion rights granted under this Section 1.1.3, the Conversion Price shall be subject to adjustment from time to time pursuant to this Section 1.1.3.

(ii) If and whenever on or after the original date of issuance of the Series D Preferred Stock, the Corporation issues or sells, or is deemed to

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have issued or sold, any shares of its Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Conversion Price shall be reduced to the Conversion Price determined by dividing (A) the sum of (x) the product derived by multiplying the Conversion Price in effect immediately prior to such issue or sale times the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (y) the consideration, if any, received by the Corporation upon such issue or sale, by (B) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale.

(iii) Notwithstanding the foregoing, there shall be no adjustment in the Conversion Price as a result of any issue or sale (or deemed issue or sale) of shares of Common Stock to employees, directors and consultants of the Corporation and its Subsidiaries pursuant to stock option plans and stock ownership plans approved by the Corporation's Board of Directors.

(c) Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price under Section 1.1.3(d), the following provisions shall apply:

(i) Issuance of Rights or Options. If the Corporation in any manner grants or sells any Options and the price per share for which Common Stock is issuable upon the exercise of such Options, or upon conversion or exchange of any Convertible Securities issuable upon exercise of such Options, is less than the Conversion Price in effect immediately prior to the time of the granting or sale of such Options, then the total maximum number or shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Options for such price per share. For purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon exercise of all such Options, plus in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of the Conversion Price shall be made when Convertible Securities are actually issued upon the exercise of such Options or when Common Stock is actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Securities and the price per

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share for which Common Stock is issuable upon conversion or exchange thereof is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (A) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Conversion Price shall be made when Common Stock is actually issued upon the conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustments of the Conversion Price had been or are to be made pursuant to other provisions of this Section 1.1.3(e), no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(iii) Change in Option Price or Conversion Rate. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Conversion Price in effect at the time of such change shall be immediately adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; provided, however, that, if such adjustment would result in an increase of the Conversion Price then in effect, such adjustment shall not be effective until thirty (30) days after written notice thereof has been given by the Corporation to all holders of the Series D Preferred Stock. For purposes of this Section 1.1.3(e)(iii) if the terms of any Option or Convertible Security which was outstanding as of the date of issuance of the Series D Preferred Stock are modified in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change; provided, however, that no such change shall at any time cause the Conversion Price hereunder to be increased.

(iv) Treatment of Expired Options and Unexercised Convertible Securities. Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Security without the exercise of any such Option or right, the Conversion Price then in effect hereunder shall be adjusted immediately to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued; provided, however, that, if such expiration or termination would result in an increase in the

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Conversion Price then in effect, such increase shall not be effective until thirty (30) days after the Corporation has provided written notice thereof to all holders of the Series D Preferred Stock. For purposes of this Section 1.1.3(e)(iv), the expiration or termination of any Option or Convertible Security which was outstanding as of the date of issuance of the Series D Preferred Stock shall not cause the Conversion Price hereunder to be adjusted unless, and only to the extent that, a change in the terms of such Option or Convertible Security caused such Option or Convertible Security to be deemed to have been issued after the date of issuance of the Series D Preferred Stock.

(v) Calculation of Consideration Received. If any Common Stock, Option or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received therefore shall be deemed to be the amount received by the Corporation therefore (net of discounts, commissions and related expenses). If any Common Stock, Option or Convertible Security is issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration, except when such consideration consists of securities, in which case the amount of consideration received by the Corporation shall be the Market Price thereof as of the date of receipt. If any Common Stock, Option or Convertible Security is issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefore shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Option or Convertible Security, as the case may be. The Board of Directors of the Corporation shall determine the fair value of any consideration other than cash and securities.

(vi) Integrated Transactions. In the event that any Option is issued in connection with the issue or sale of securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties thereto, the Option shall be deemed to have been issued for a consideration of One Cent (\$.01).

(vii) Treasury Shares. The number of shares of Common Stock outstanding at any time shall not include shares owned or held by or for the account of the Corporation or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(viii) Record Date. If the Corporation takes a record of the holders of Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities, or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

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(f) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and if the Corporation at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediate prior to such combination shall be proportionately increased.

(g) Certain Events. If any event occurs of the type contemplated by the provisions of this Section 1.1.3 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate adjustment to the Conversion Price to protect the rights of the holders of Series D Preferred Stock; provided, however, that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this Section 1.1.3 or decrease the number of shares of Conversion Stock issuable upon conversion of each share of Series D Preferred Stock.

(h) Notices. Immediately upon any adjustment of the Conversion Price, the Corporation shall give written notice thereof to all holders of Series D Preferred Stock, describing in reasonable detail and certifying the calculation of such adjustment.

1.1.4 Registration of Transfer.

The Corporation shall keep at its principal office a register for the registration of Series D Preferred Stock. Upon the surrender of any certificate representing Series D Preferred Stock at such place, the Corporation, at the request of the record holder of such certificate, shall execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of the Series D Preferred Stock represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent the number of such shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate.

1.1.5 Replacement.

Upon receipt of evidence reasonably satisfactory to the Corporation of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series D Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided, that, if the holder is a financial institution or other institutional investor, then its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation, at its expense, shall execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of the Series D Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

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1.2 Voting Rights.

(a) Holders of Series D Preferred Stock shall have no voting rights except as provided in Section 1.2(b) or as otherwise provided by law.

(b) The Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series D Preferred Stock so as to affect adversely the Series D Preferred Stock, without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series D Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, without limiting the generality of the foregoing, the authorization of any shares of capital stock with preference or priority over the Series D Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall be deemed to affect adversely the Series D Preferred Stock, and the authorization of any shares of capital stock on a parity with Series D Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall not be deemed to affect adversely the Series D Preferred Stock.

1.3 Purchase Rights.

If at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "Purchase Rights"), then each holder of Series D Preferred shall be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Conversion Stock acquirable upon conversion of such holder's Series D Preferred Stock immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

1.4 Definitions. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms as follows:

"Common Stock" means, collectively, the Corporation's Common Stock and any capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation.

"Common Stock Deemed Outstanding" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Section 1.1.3(e) hereof whether or not the Options or Convertible Securities are actually exercisable at such time, but excluding any shares of Common Stock issuable upon conversion of the Series D Preferred Stock.

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"Conversion Price" means the price at which shares of the Series D Preferred Stock may be converted to Common Stock as set forth under the terms and provisions of this Amendment.

"Conversion Stock" means shares of the Corporation's Common Stock issued or to be issued upon the conversion of the Series D Preferred Stock; provided, however, that if there is a change such that the securities issuable upon conversion of the Series D Preferred Stock are issued by an entity other than the Corporation, or there is a change in the type or class of securities so issuable, then the term "Conversion Stock" shall mean one share of the security issuable upon conversion of the Series D Preferred Stock if such security is issuable in shares, or shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

"Convertible Securities" means any stock or securities directly or indirectly convertible into or exchangeable for Common Stock.

"Fair Market Value" shall mean the value of the respective capital stock of the Corporation as determined in good faith by the Board of Directors of the Corporation.

"Liquidation Value" shall mean the Purchase Price per share of the Series B Preferred Stock, the Series C Preferred Stock or the Series D Preferred Stock, as applicable.

"Market Price" of any security means the average of the closing prices of such security's sales on all securities exchanges on which such security may at the time be listed, or, if there has been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average or the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, or, on any day such security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of twenty-one (21) days consisting of the day as of which "Market Price" is being determined and the twenty (20) consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the "Market Price" shall be the fair value thereof determined by the Board of Directors of the Corporation.

"Options" means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Public Offering" means any offering by the Corporation of its capital stock or equity securities to the public pursuant to an effective registration statement

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tinder the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force resulting in gross proceeds to the Corporation of not less than \$5 million; provided, however, that for purposes of Section 1.1.3(b) hereof, a Public Offering shall not include an offering made in connection with a business acquisition or combination or an employee benefit plan.

"Purchase Price Per Share" shall mean \$2.73 per share of the Series B Preferred Stock, \$3.00 per share of the Series C Preferred Stock and \$4.00 per share of the Series D Preferred Stock.

"Sale of the Corporation" of the Corporation means (i) any sale or transfer of substantially all of the assets of the Corporation and its subsidiaries on a consolidated basis (measured either by book value in accordance with generally accepted accounting principles consistently applied or by fair market value determined in the reasonable good faith judgment of the Corporation's Board of Directors) in any transaction or series of transactions (other than sales in the ordinary course of business), and (ii) any merger or consolidation to which the Corporation is a party, except for a merger in which the Corporation is the surviving corporation, the terms of the Series D Preferred Stock are not changed, and the shares of Series D Preferred Stock are not exchanged for cash, securities, or other property.

"Sale Notice" means the written notice given by the Corporation to the holders of the Series D Preferred Stock notifying the holders of a pending Sale of the Corporation, which Sale Notice must be given to the holders of the Series D Preferred Stock at their respective addresses as reflected on the books of the Corporation at least thirty (30) days prior to the consummation of the Sale of the Corporation.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person Or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability company, partnership, association or other business entity.

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SEP. 15. 2005 11:05AM FOLEY LARDNER

NO. 6476 P. 13

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IN WITNESS WHEREOF, the undersigned President of this Corporation has executed this Amendment this 13th day of September, 2005.



William A. Levine, President