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C T CORPORATION SYSTEM

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Tallahassee, FL 32301 (850)222-1092  
City State Zip Phone

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CORPORATION(S) NAME

*Amended &  
Restated*

*Purely Cotton, Inc*

FILED  
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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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| <input type="checkbox"/> NonProfit                     |   |   |
| <input type="checkbox"/> Limited Liability Company     | <input type="checkbox"/> Dissolution/Withdrawal | <input type="checkbox"/> Mark               |
| <input type="checkbox"/> Foreign                       |   |   |
| <input type="checkbox"/> Limited Partnership           | <input type="checkbox"/> Annual Report          | <input type="checkbox"/> Other              |
| <input type="checkbox"/> Reinstatement                 | <input type="checkbox"/> Reservation            | <input type="checkbox"/> Change of R.A.     |
| <input type="checkbox"/> Limited Liability Partnership |   | <input type="checkbox"/> Fictitious Name    |
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| <input checked="" type="checkbox"/> Walk In            | <input type="checkbox"/> Will Wait              | <input checked="" type="checkbox"/> Pick Up |
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**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
PURELY COTTON, INC.**

FILED  
99 JUN -9 PM 3:08  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to Section 607.1007 of the Florida Business Corporation Act (the "FBCA"), the undersigned corporation adopts the following Amended and Restated Articles of Incorporation:

FIRST: The name of the corporation is Purely Cotton, Inc. (the "Corporation").

SECOND: Articles I through XII are hereby deleted in their entirety and replaced by new Articles I through X as follows:

**ARTICLE I**

**Name and Duration**

The name of the corporation is Purely Cotton, Inc. The duration of the Corporation is perpetual.

**ARTICLE II**

**Principal Office**

The Corporation has no principal location in the State of Florida. The mailing address of the Corporation is 200 First Avenue West, Suite 505, Seattle, Washington 98119.

**ARTICLE III**

**Registered Office and Agent**

The address of the registered office in the State of Florida is 660 East Jefferson Street, City of Tallahassee, County of Broward. The name of the registered agent at such address is CT Corporation System.

**ARTICLE IV**

**Corporate Purposes, Powers and Rights**

1. The nature of the business to be conducted or promoted and the purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the Florida Business Corporation Act.
2. In furtherance of its corporate purposes, the Corporation shall have all of the general and specific powers and rights granted to and conferred on a corporation by the Florida Business Corporation Act.

## ARTICLE V

### Capital Stock

1. Authorized Capital. The maximum number of shares of stock which the Corporation is authorized to have outstanding at any one time is 38,000,000 shares, which shall be divided into classes as follows:

- (a) Twelve Million (12,000,000) shares of preferred stock, par value \$.01 (hereinafter referred to as "Preferred Stock"), 1,771,000 shares of which shall be designated Series A Voting Preferred Stock, 1,000,000 shares of which shall be designated as Series A Non-Voting Preferred Stock (the Series A Voting Preferred Stock and the Series A Non-Voting Preferred Stock are sometimes collectively referred to herein as the "Series A Preferred Stock"), 1,319,000 shares of which shall be designated Series B Voting Preferred Stock and no shares of which shall be designated Series B Non-Voting Preferred Stock (the Series B Voting Preferred Stock and the Series B Non-Voting Preferred Stock are sometimes collectively referred to herein as the "Series B Preferred Stock"), 7,740,278 shares of which shall be designated Series C Voting Preferred Stock, no shares of which shall be designated as Series C Non-Voting Preferred Stock (the Series C Voting Preferred Stock and the Series C Non-Voting Preferred Stock are sometimes collectively referred to herein as the "Series C Preferred Stock");
- (b) Twenty Five Million (25,000,000) shares of voting common stock, par value \$.01 (hereinafter referred to as "Voting Common Stock"); and
- (c) One Million (1,000,000) shares of non-voting common stock, par value \$.01 (hereinafter referred to as "Non-Voting Common Stock", with the Voting Common Stock and Non-Voting Common Stock sometimes collectively referred to herein as the "Common Stock").

All such shares, when issued, shall be fully paid and non-assessable.

2. Preferred Stock. The Board of Directors is authorized at any time and from time to time to divide the Preferred Stock into one or more series and to fix and determine the relative rights, preferences and limitations of the shares of any series so established. The Board of Directors shall adopt a resolution establishing and designating the series, determining the number of shares which shall constitute such series and determining the relative rights, preferences and limitations thereof, which relative rights, preferences and limitations may differ with respect to each series as to:

- (a) The rate or manner of payment of dividends on such series, including the dividend rate, the date of declaration and payment, and whether and the extent to which such dividends shall be cumulative;
- (b) Whether the shares of such series may be redeemed, and if so, the redemption price and the terms and conditions of redemption;
- (c) The amount payable upon shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
- (d) Sinking fund provisions, if any, for the redemption or purchase of shares of such series;

- (e) The terms and conditions, if any, on which shares of such series may be converted into shares of any other class or series;
- (f) Voting rights, if any; and
- (g) Any other relative rights, preferences and limitations for such series which Florida law empowers the Board of Directors to determine.

Except in respect to the relative rights, preferences and limitations that may be fixed by the Board of Directors pursuant to this Section, all shares of Preferred Stock shall be identical.

Dividends on outstanding shares of Preferred Stock shall be declared and paid or set apart for payment before any dividends shall be declared and paid or set apart for payment on the outstanding shares of Common Stock with respect to the same quarterly period. Dividends on any shares of Preferred Stock shall be cumulative only if and to the extent determined by resolution of the Board of Directors, as provided above. In the event of any liquidation, dissolution or winding up of the affairs of Corporation, whether voluntary or involuntary, the outstanding shares of Preferred Stock shall have preference and priority over the outstanding shares of Common Stock for payment of the amount, if any, to which shares of each outstanding series of Preferred Stock may be entitled in accordance with the terms and rights thereof and each holder of Preferred Stock shall be entitled to be paid in full such amount, or have a sum sufficient for the payment in full set aside, before any such payments shall be made to the holders of Common Stock.

3. Conversion of the Non-Voting Common Stock. Each share of Non-Voting Common Stock shall automatically convert into a share of Voting Common Stock upon a sale of such Non-Voting Common Share (i) in a public offering, (ii) in a tender offer or other sale of control approved by the Board of Directors of the Corporation, such that the Non-Voting Common Stock is treated on a pari passu basis with the Voting Common Stock, and/or (iii) by the holder thereof to an unaffiliated third party provided that such sale is not in an amount exceeding two percent (2%) of the aggregate Voting Common Stock then outstanding. In addition, the Non-Voting Common Stock shall be convertible at any time from time to time into Voting Common Stock at the option of the holder of such Non-voting Common Stock, so long as such conversion does not violate any applicable banking laws or regulations.

4. Common Stock. Each holder of Voting Common Stock shall have one vote for each share of Voting Common Stock standing in his name on the books of the Corporation. Holders of Non-Voting Common Stock shall have no right to vote their shares of Non-Voting Common Stock, except to the extent provided by applicable law. Except with respect to voting and conversion, each share of Voting Common Stock and each share of Non-Voting Common Stock shall have identical rights, powers, preferences and limitations. Subject to the rights and preferences of the Preferred Stock, holders of Common Stock are entitled to such dividends as may be declared by the Board of Directors out of funds lawfully available therefor. Upon any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Common Stock are entitled to receive pro rata the remaining assets of the Corporation after the holders of Preferred Stock have been paid in full the sums to which they are entitled.

5. No Preemptive Rights. No holder of any shares of capital stock of this Corporation of any kind, class or series shall have, as a matter of right, any preemptive or preferential right to subscribe for, purchase or receive any shares of the capital stock of this Corporation of any kind, class or series or any other securities or obligations of this Corporation, whether now or hereafter authorized.

6. Series A Preferred Stock.

Section 1. Voting Rights. (a) Except as otherwise required by law or expressly provided herein, the holders of shares of Series A Voting Preferred Stock shall be entitled to vote on all matters submitted to a vote of the stockholders of the Corporation and shall have such number of votes equal to the number of shares of Voting Common Stock into which such holders' shares of Series A Voting Preferred Stock are convertible pursuant to the provisions hereof at the record date for the determination of stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise required by law or expressly provided herein, the holders of shares of Series A Voting Preferred Stock, Series B Voting Preferred Stock and Voting Common Stock shall vote together and not as separate classes.

(b) Except as otherwise required by law or expressly provided herein, the holders of shares of Series A Non-Voting Preferred Stock shall not be entitled to vote on any matter submitted to a vote of the stockholders of the Corporation, except that such holders shall be entitled to vote as a separate class on any amendment, repeal or modification of any provision of the Articles of Incorporation of the Corporation that adversely affects the powers, preferences or special rights of the Series A Non-Voting Preferred Stock in a manner different than the adverse effect on the powers, preferences or special rights of the Series A Voting Preferred Stock.

(c) Any amendment, repeal or modification of any provision of the Articles of Incorporation of the Corporation that adversely affects the powers, preferences or special rights of the Series A Non-Voting Preferred Stock and the Series A Voting Preferred Stock in the same manner must be submitted to a vote of the Series A Non-Voting Preferred Stock and the Series A Voting Preferred Stock considered as a single class (with each share of Series A Preferred Stock having one vote).

Section 2. Dividend Rights. (a) When and as declared by the Board of Directors of the Corporation (the "Board") and to the extent permitted under applicable law, the Corporation shall pay preferential dividends to the holders of Series A Preferred Stock as provided in this Section 2. Except as otherwise provided herein, dividends on each share of Series A Preferred Stock accrue on a daily basis at a rate of seven percent (7%) per annum (the "Series A Dividend Rate") of the sum of the Series A Liquidation Value plus all accumulated and unpaid dividends thereon, from and including the date of issuance of such share of Series A Preferred Stock to and including the date on which the Series A Liquidation Value of such share of Series A Preferred Stock plus all accumulated and accrued and unpaid dividends thereon is paid or such Series A Preferred Stock is converted into Common Stock. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Such dividends shall be cumulative such that all accumulated and accrued and unpaid dividends shall be fully paid or declared with funds irrevocably set apart for payment before any dividend, distribution or payment can be made with respect to any Series A Junior Securities. The date on which the Corporation initially issues any share of Series A Preferred Stock shall be deemed to be its "date of issuance" regardless of the number of times transfer of such share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such share. "Series A Liquidation Value" of any share of Series A Preferred Stock as of any particular date will be equal to \$3.60 (adjusted appropriately in the event the shares of Series A Preferred Stock are subdivided into a greater number, whether by stock split, stock dividend or otherwise, or combined into a lesser number, whether by reverse stock split or otherwise). "Series A Junior Securities" means any equity securities of the Corporation other than the Series A Preferred Stock and the Series B Preferred Stock.

(b) March 31, June 30, September 30, and December 31 of each year shall constitute "Series A Dividend Reference Dates" for purposes hereof. To the extent not paid on each Series A Dividend Reference Date, all dividends which have accumulated and accrued on each share of Series A Preferred Stock during the twelve-month period ending upon each December 31 shall be accumulated and shall remain accumulated and unpaid dividends with respect to such share of Series A Preferred Stock until paid.

(c) Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accumulated and accrued with respect to all outstanding shares of Series A Preferred Stock, such payment shall be distributed ratably among the holders of such shares based upon the number of shares of such series held by each such holder.

(d) No dividends shall be declared or paid, or set aside for payment, on the Series A Preferred Stock until all accumulated and accrued dividends have been declared and paid on the Series B Preferred Stock. No dividends shall be declared or paid, or set aside for payment, on any Series A Junior Securities until all accumulated and accrued dividends have been declared and paid on the Series A Preferred Stock.

### Section 3. Liquidation Rights.

(a) In the event of any liquidation of the Corporation, whether voluntary or involuntary (a "Liquidation"), each holder of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after payment of the preferential amounts payable to the holders of the Series B Preferred Stock but before any payment or declaration and setting apart for payment of any amount shall be made in respect of Series A Junior Securities, an amount per share of Series A Preferred Stock held by such holder equal to the greater of (i) the sum of \$3.60 per share of Series A Preferred Stock held by such holder (such amount to be adjusted proportionately in the event the shares of Series A Preferred Stock are subdivided by any means into a greater number or combined by any means into a lesser number) plus all accumulated and accrued but unpaid dividends on such share of the Series A Preferred Stock and (ii) an amount that would be received by such holder if all shares of Series A Preferred Stock and Series B Preferred Stock were converted into Common Stock immediately prior to such Liquidation (the greater of such sum is referred to herein as the "Series A Liquidation Preference"). If, upon any Liquidation, the assets to be distributed to the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such stockholders of the full preferential amount aforesaid, then all of the assets of the Corporation to be distributed shall be distributed ratably to the holders of Series A Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(b) For purposes of this Section 3, the merger or consolidation of the Corporation with or into any other entity or entities, or the merger of any other entity or entities into the Corporation, shall not be treated as a Liquidation.

(c) Nothing contained in this Section 3 shall be deemed to prevent any holder of Series A Preferred Stock from exercising such holder's right of conversion pursuant to Section 5 hereof with respect to any share of Series A Preferred Stock at any time prior to the Liquidation including after the giving of any notice of such Liquidation.

### Section 4. Redemption.

(a) (i) At any time or times on or after May 15, 2003, each holder of the outstanding shares of Series A Preferred Stock may elect to require the Corporation to redeem all or any portion of the outstanding shares of Series A Preferred Stock held by such holder by delivering written notice of such request to the Corporation. Within five (5) days after receipt of any such notice, the Corporation shall give written notice of such request by overnight courier (accompanied by a copy of the Corporation's most recent audited and unaudited financial statements) to all holders of shares of Series A Preferred Stock and Series B Preferred Stock (the "Preferred Shares"). The Corporation shall be required to redeem all outstanding Preferred Shares with respect to which redemption requests have been made at a price per share equal to the Series A Mandatory Redemption Price or Series B Mandatory Redemption Price, as applicable, within fifty (50) days after receipt of the initial redemption request (the "Mandatory Redemption Date"), subject to the provisions hereinafter set forth. For purposes hereof, the "Series A Mandatory Redemption Price" of any share of Series A Preferred Stock means an amount equal to the sum of \$3.60 (such amount to be adjusted proportionately in the event that the shares of Series A Preferred Stock are subdivided or combined by any means into a greater or lesser number) plus all accumulated and accrued but unpaid dividends on such shares of Series A Preferred Stock through the Mandatory Redemption Date.

(ii) For each Preferred Share that is to be redeemed on the Mandatory Redemption Date, the Corporation shall be obligated to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such Preferred Share) an amount in immediately available funds equal to the Series A Mandatory Redemption Price or Series B Mandatory Redemption Price, as applicable.

(b) The funds of the Corporation legally available for the redemption of the Preferred Shares on the Mandatory Redemption Date shall be used first to redeem the shares of Series B Preferred Stock. If the funds of the Corporation legally available for the redemption of the Series B Preferred Stock on the Mandatory Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock to be redeemed on such date, those funds which are legally available shall be used to pay any and all accumulated and accrued but unpaid dividends on the shares of Series B Preferred Stock to be redeemed, and thereafter, to redeem the shares of Series B Preferred Stock to be redeemed on such Mandatory Redemption Date, paid to the holders of the Series B Preferred Stock ratably in proportion to the number of shares of Series B Preferred Stock held by each such holder to be redeemed on the Mandatory Redemption Date. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series B Preferred Stock, such funds shall immediately be used to redeem the balance of the shares of Series B Preferred Stock which the Corporation had become obligated to redeem but had not redeemed, paid to the holders of the shares of Series B Preferred Stock to be redeemed ratably in proportion to the number of shares of Series B Preferred Stock to be redeemed held by each such holder on the date such funds become legally available.

(c) After all shares of Series B Preferred Stock to be redeemed on the Mandatory Redemption Date have been redeemed as provided above, then the funds of the Corporation legally available for the redemption of the Preferred Shares shall be used to redeem the shares of Series A Preferred Stock as provided in this subsection (c). If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on the Mandatory Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed, those funds which are legally available shall be used first, to pay any and all accumulated and accrued but unpaid dividends on the shares of Series A Preferred Stock to be redeemed, and thereafter, to redeem the shares of Series A Preferred Stock to be redeemed, paid to the holders of the shares of Series A Preferred Stock to be

redeemed ratably in proportion to the number of shares of Series A Preferred Stock held by each such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds shall immediately be used to redeem the balance of the shares of Series A Preferred Stock which the Corporation had become obligated to redeem but had not redeemed, paid to the holders of the shares of Series A Preferred Stock to be redeemed ratably in proportion to the number of shares of Series A Preferred Stock to be redeemed held by each such holder on the date such funds become legally available.

(d) Nothing contained in this Section 4 shall be deemed to prevent any holder of Series A Preferred Stock from exercising such holder's right of conversion pursuant to Section 5 hereof with respect to any share of Series A Preferred Stock at any time subsequent to the required redemption date thereof and prior to the payment of the redemption price therefor.

#### Section 5. Conversion.

##### (a) Conversion Procedure.

(i) Any holder of shares of Series A Voting Preferred Stock may at any time (including at any time after a date scheduled for the redemption of such shares on which the Corporation defaults in, or is prohibited from making, the payment of the redemption price but before the payment of such redemption price is made) convert all or any number of such shares held by such holder into a number of shares of Voting Common Stock computed by dividing (A) the sum of (1) the number of such shares to be converted multiplied by \$3.60 plus (2) the amount of accumulated and accrued but unpaid dividends on such shares to be converted by (B) the Series A Conversion Price then in effect. Any holder of shares of Series A Non-Voting Preferred Stock may at any time (including at any time after a date scheduled for the redemption of such shares on which the Corporation defaults in, or is prohibited from making, the payment of the redemption price but before the payment of such redemption price is made) convert all or any number of such shares held by such holder into a number of shares of Non-Voting Common Stock computed by dividing (A) the sum of (1) the number of such shares to be converted multiplied by \$3.60 plus (2) the amount of accumulated and accrued but unpaid dividends on such shares to be converted by (B) the Series A Conversion Price then in effect.

(ii) Each conversion of shares of Series A Preferred Stock will be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing such shares to be converted have been surrendered at the principal office of the Corporation. At such time as such conversion has been effected, the rights of the holder of such shares of Series A Preferred Stock as such holder will cease and the person (or entity) or persons (or entities) in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iii) As soon as possible after a conversion has been effected (but in any event within three business days), the Corporation will deliver to the converting holder:

(A) a certificate or certificates representing the number of shares of Voting Common Stock or Non-Voting Common Stock, as the case may be, issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified; and



(B) a certificate representing any shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock, as the case may be, which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(iv) The issuance of certificates for shares of Voting Common Stock or Non-Voting Common Stock, as the case may be, upon conversion of shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock, respectively, will be made without charge to the holders of such shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Voting Common Stock or Non-Voting Common Stock. Upon conversion of each share of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock, as the case may be, the Corporation will take all such actions as are necessary in order to insure that the Voting Common Stock or Non-Voting Common Stock issuable with respect to such conversion will be validly issued, fully paid and nonassessable.

(v) The Corporation will not close its books against the transfer of shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock or of Voting Common Stock or Non-Voting Common Stock issued or issuable upon conversion of shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock, respectively, in any manner which interferes with the timely conversion of such shares.

(vi) If any fractional interest in a share of Voting Common Stock or Non-Voting Common Stock would, except for the provisions of this sub-paragraph (vi), be deliverable upon any conversion of shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock, respectively, the Corporation, in lieu of delivering the fractional share therefor, will pay an amount to the holder thereof equal to the Market Price of such fractional interest as of the date of conversion. "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 sale 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 of the closing prices quoted in the Nasdaq System as of 4:00 P.M., New York time, or, if 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 21 business days consisting of the day as of which "Market Price" is being determined and the 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" will be the fair value thereof reasonably determined in good faith by the Board.

(b) Series A Conversion Price.

(i) The initial Series A Conversion Price for the Series A Preferred Stock will be \$3.60. In order to prevent dilution of the conversion rights granted under this Section 5, the Series A Conversion Price will be subject to adjustment from time to time pursuant to this Section 5.

(ii) If and whenever on or after the original date of issuance of shares of Series A Preferred Stock, the Corporation issues or sells, or in accordance with Section 5(c) is deemed to have issued or sold, any share of its Common Stock for a consideration per share less than the Series A Conversion Price in effect, then forthwith upon such issuance or sale, or deemed issuance or sale, the Series A Conversion Price will be reduced, in order to increase the number of shares of Common Stock into which the Series A Preferred Stock is convertible, to that price per share determined by dividing (A) the sum of (x) the product derived by multiplying the Series A Conversion Price in effect immediately prior to such issuance or sale, or deemed issuance or sale, times the number of shares of Common Stock outstanding immediately prior to the issuance or deemed issuance of such Common Stock plus (y) the aggregate consideration (if any) received by the Corporation for the total number of such shares of Common Stock so issued or sold or deemed issued or sold by (B) the number of shares of Common Stock outstanding immediately after such issue or sale or deemed issuance or sale, provided, however, that additional shares of Common Stock issued or sold (or deemed issued or sold) without consideration shall be deemed to have been sold for \$0.001 per share.

(c) Effect on Series A Conversion Price of Certain Events. For purposes of determining the adjusted Series A Conversion Price under Section 5(b), the following will be applicable:

(i) Issuance of Rights or Options. If the Corporation in any manner grants any rights or options to subscribe for or to purchase Common Stock or any stock or other securities convertible into or exchangeable for Common Stock (such rights or options being herein called "Options" and such convertible or exchangeable stock or securities being herein called "Convertible Securities") and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Series A Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities will be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. For purposes of this paragraph, the "price per share for which Common Stock is issuable" will be determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting 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 all 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 Series A Conversion Price will 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 share for which Common Stock is issuable upon such conversion or exchange is less than the Series A 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 will be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" will 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 Series A Conversion Price will 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 Series A Conversion Price had been or are to be made pursuant to other provisions of this Section 5, no further adjustment of the Series A Conversion Price will 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 change at any time (other than solely through the operation of anti-dilution provisions similar to those contained herein), the Series A Conversion Price in effect at the time of such change will be readjusted to the Series A 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 changed conversion rate, as the case may be, at the time initially granted, issued or sold.

(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 Series A Conversion Price then in effect hereunder will be adjusted to the Series A 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. No adjustment made pursuant to this paragraph shall have the effect of increasing the Series A Conversion Price by an amount in excess of the amount of the adjustment made in respect of the issuance of such Options or Convertible Securities.

(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 therefor will be deemed to be the amount received by the Corporation therefor (net of any issuance expenses, discounts and commissions). In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Corporation will be the Market Price thereof as of the date of receipt. If any Common Stock, Option or Convertible Security is issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving corporation as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash and securities will be reasonably determined in good faith by the Board.

(vi) Integrated Transactions. In case any Option is issued in connection with the issue or sale of other 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 will be deemed to have been issued without consideration.

(vii) Treasury Shares. The number of shares of Common Stock outstanding at any given time does 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 will 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 (A) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then for purposes of this Section 5 such record date will 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.

(ix) Certain Events. If any event occurs of the type contemplated by the provisions of this Section 5 but not expressly provided for by such provisions (including, but not limited to, the granting of stock or capital appreciation rights, phantom stock rights or other rights with equity features), then the Board shall make an appropriate adjustment in the Series A Conversion Price so as to protect the rights of the holders of Series A Preferred Stock; provided that no such adjustment shall increase the Series A Conversion Price as otherwise determined pursuant to this Section 5 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock.

(x) Certain Exceptions. Anything herein to the contrary notwithstanding, no adjustment will be made to the Series A Conversion Price by reason of the issuance of (i) the Warrants, the Old Warrants, the Bridge Loan Warrants, the Additional Warrants, the Contingent Warrants and the Fee Warrants, (ii) shares of Common Stock issuable upon exercise of the Warrants, the Old Warrants, the Bridge Loan Warrants, the Additional Warrants, the Contingent Warrants and the Fee Warrants, (iii) shares of Series B Preferred Stock issuable upon conversion of the Notes, (iv) shares of Series A Preferred Stock issuable upon conversion of the subordinated notes issued pursuant to the Original Agreement and the Amended and Restated Original Agreement, (v) shares of Common Stock issuable upon conversion of the Series A Preferred Stock and Series B Preferred Stock, (vi) options granted and to be granted, and shares of Common Stock issuable upon exercise of such options, pursuant to the Stock Option Plan and (vii) the issuance of shares of Common Stock upon a subdivision of the Common Stock for which an adjustment to the Series A Conversion Price is made pursuant to Section 5(d).

(d) 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 Series A Conversion Price in effect immediately prior to such subdivision will 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 Series A Conversion Price in effect immediately prior to such combination will be proportionately increased.

(e) Reorganization, Reclassification, Consolidation, Merger or Sale. Any capital reorganization, reclassification, consolidation, merger or sale of all or substantially all of the Corporation's assets to another person or entity which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as an "Organic Change". Prior to the consummation of any Organic Change, the Corporation will make appropriate provisions to insure that each of the holders of Series A Preferred Stock will thereafter have the right to acquire and receive, in lieu of or in addition to the shares of Common Stock immediately theretofore acquirable and receivable upon the conversion of such holder's shares of Series A Preferred Stock, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted his Series A Preferred Stock immediately prior to such Organic Change. In any such case, the Corporation will make appropriate provisions to insure that the provisions of this Section 5 will thereafter be applicable to the Series A Preferred Stock (including, in the case of any such consolidation, merger or sale in which the successor corporation or purchasing corporation is other than the Corporation, an immediate adjustment of the Series A Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Common Stock acquirable and receivable upon conversion of shares of Series A Preferred Stock, if the value so reflected is less than the Series A Conversion Price in effect immediately prior to such consolidation, merger or sale). The Corporation will not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from consolidation or merger or the corporation purchasing such assets assumes by written instrument, the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(f) Notices.

(i) Immediately upon any adjustment of the Series A Conversion Price, the Corporation will give written notice thereof to all holders of shares of Series A Preferred Stock.

(ii) The Corporation will give written notice to all holders of shares of Series A Preferred Stock at least 20 days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Organic Change or Liquidation.

(iii) The Corporation will also give written notice to the holders of shares of Series A Preferred Stock at least 20 days prior to the date on which any Organic Change or Liquidation will take place.

(g) Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock, such number of its shares of Common Stock (both Voting Common Stock and Non-Voting Common Stock) as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(h) Taxes and Charges. The Corporation will pay all taxes and other governmental charges that may be imposed in respect of the issue or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock.

(i) Rounding. All calculations under this Section 5 shall be made to the nearest cent or to the nearest one-tenth of a share, as the case may be.

(j) Protection of Conversion Rights. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issuance or sale of securities or any other voluntary action, for the purpose of avoiding or seeking 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 5 and will take all actions that may be necessary or appropriate in order to protect against impairment the rights of the holders of shares of Series A Preferred Stock to convert such shares.

(k) Automatic Conversion. (i) Each share of Series A Voting Preferred Stock and Series A Non-Voting Preferred Stock shall automatically be converted into shares of Voting Common Stock and Non-Voting Common Stock, respectively, at the Series A Conversion Price then in effect immediately upon the closing of an underwritten public offering pursuant to a registration statement declared effective under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock in which the aggregate gross proceeds received by the Corporation in such public offering equals or exceeds \$20,000,000, the price per share at which the Common Stock is offered to the public is not less than \$3.50, the offering is effected through a firm commitment underwriting with a recognized regional or better underwriter and the Common Stock is thereafter listed or traded on a national securities exchange or nationally recognized electronic trading medium (a "Qualified Public Offering"). Immediately upon the closing of a Qualified Public Offering, the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of the Series A Preferred Stock being converted are either delivered to the Corporation or any transfer agent or the holder complies with the provisions of Section 7(c) hereof. Upon the automatic conversion of the Series A Preferred Stock, the holder of such Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of any transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder, promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series A Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(ii) Each share of Series A Voting Preferred Stock and Series A Non-Voting Preferred Stock shall automatically be converted into shares of Voting Common Stock and Non-Voting Common Stock, respectively, at the Series A Conversion Price then in effect immediately upon the vote or written consent of the holders of at least 60% of the then outstanding Series A Voting Preferred Stock and Series A Non-Voting Preferred Stock, voting for this purpose as a single class with each share of Series A Voting Preferred Stock and each share of Series A Non-Voting Preferred Stock having one vote. Upon such vote or written consent, the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable

upon such conversion unless certificates evidencing such shares of the Series A Preferred Stock being converted are either delivered to the Corporation or any transfer agent or the holder complies with the provisions of Section 7(c) hereof. Upon the automatic conversion of the Series A Preferred Stock, the holder of such Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of any transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder, promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series A Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(I) Conversion of Series A Non-Voting Preferred Stock and Series A Voting Preferred Stock. (i) Upon compliance with the provisions of Section 5(l)(iii) below, any Regulated Stockholder (as hereinafter defined) shall be entitled to convert, at any time and from time to time, any and all of the shares of Series A Voting Preferred Stock held by such Regulated Stockholder into the same number of shares of Series A Non-Voting Preferred Stock. As used herein, (x) "Regulated Stockholder" means any person or entity that has provided written notification to the Secretary of the Corporation that it is (i) a stockholder that is subject to the provisions of Regulation Y of the Board of Governors of the Federal Reserve System (12 C.F.R. Part 225) or any successor to such regulation ("Regulation Y"), so long as such stockholder shall hold, and only with respect to, any Common Stock, Series A Preferred Stock or Series B Preferred Stock, or shares issued upon conversion(s) of such stock, (ii) an Affiliate (as hereinafter defined) of a Regulated Stockholder that is a transferee of any Common Stock, Series A Preferred Stock or Series B Preferred Stock, so long as such Affiliate shall hold, and only with respect to, any such shares of stock or shares issued upon conversion(s) of such shares and (iii) an individual, partnership, limited liability company, joint venture, corporation, association, trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof (a "Person"), to which such Regulated Stockholder or any of its Affiliates has transferred any Common Stock, Series A Preferred Stock or Series B Preferred Stock, so long as such transferee shall hold, and only with respect to any shares of such stock transferred by such stockholder or Affiliates or any shares issued upon conversions of such shares but only if such Person is (or any Affiliate of such Person is) subject to the provisions of Regulation Y; and (y) "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person; for the purpose of the foregoing definition, the term "control" (including with correlative meanings, the terms "controlling", "controlled by", and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

The Corporation shall not convert or directly or indirectly purchase or otherwise acquire any shares of Series A Voting Preferred Stock or take any other action affecting the voting rights of the holders of such shares, if such action will increase the percentage of outstanding voting securities of any class or series (including the Series A Voting Preferred Stock) owned by or controlled by any Regulated Stockholder (other than the stockholder which requested that the Corporation take such action, or which otherwise waives in writing its rights under this Section 5(l)(i)) unless the Corporation gives written notice (the "Series A Preferred Stock First Notice") of such action to each Regulated Stockholder. The Corporation will defer making any conversion, purchase or other acquisition or taking any such other action for a period of 30 days (the "Series A Preferred Stock Deferral Period") after giving the Series A Preferred Stock First Notice in order to allow each such Regulated Stockholder to determine whether it wishes to convert or take any other action with respect to the Series A Voting Preferred Stock it owns, controls or has the power to vote, and if any such Regulated Stockholder then elects to convert any shares

of the Series A Voting Preferred Stock, it shall notify the Corporation in writing within 20 days of the issuance of the Series A Preferred Stock First Notice, in which case the Corporation (x) shall promptly notify from time to time each other Regulated Stockholder holding shares of each proposed conversion and the proposed transactions, and (y) effect the conversion requested by all Regulated Stockholders in response to the notices issued pursuant to this Section 5(l)(i) at the end of the Series A Preferred Stock Deferral Period or as soon thereafter as is reasonably practicable. Notwithstanding anything to the contrary contained in the Articles of Incorporation of the Corporation, the Corporation will not directly or indirectly redeem, purchase, acquire or take any other action affecting outstanding Series A Voting Preferred Stock if such action will increase above 24.9% the percentage of outstanding Series A Preferred Stock owned by or controlled by any Regulated Stockholder and its Affiliates (other than a stockholder which waives in writing its rights under this Section 5(l)(i)).

(ii) Upon compliance with the provisions of Section 5(l)(iii) below, any holder of shares of Series A Non-Voting Preferred Stock shall be entitled to convert, at any time and from time to time, any and all shares of Series A Non-Voting Preferred Stock held by such holder into the same number of shares of Series A Voting Preferred Stock; provided, however, that no holder of any shares of Series A Non-Voting Preferred Stock shall be entitled to convert any such shares into shares of Series A Voting Preferred Stock, and the Corporation shall not be required to record such conversion, to the extent that, as a result of such conversion, such holder and its Affiliates, directly or indirectly, would own, control or have the power to vote a greater number of shares of Series A Voting Preferred Stock or other securities of any kind issued by the Corporation than such holder and its Affiliates shall be permitted to own, control or to have the power to vote under any law, regulation, rule or other requirement of any governmental authority at the time applicable to such holder or its Affiliates; provided, further, that the Corporation shall be entitled to rely without independent verification upon the representation of any holder that the conversion of shares by such holder is permitted under applicable law, and in no event shall the Corporation be liable to any such holder or any third party arising from any such conversion whether or not permitted by applicable law.

If the Corporation shall in any manner subdivide (by stock split, reclassification, stock dividend or otherwise) or combine (by reverse stock split, reclassification or otherwise) the outstanding shares of the Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock, the outstanding shares of the other class shall be proportionately subdivided, reclassified or combined, as the case may be, and effective provision shall be made for the protection of all conversion rights hereunder. In case of any reorganization, reclassification or change of shares of Series A Voting Preferred Stock (other than a change in par value, or from par value to no par value as a result of a subdivision or combination), or in case of any consolidation of the Corporation with one or more other corporations or a merger of the Corporation with another entity (other than a consolidation or merger in which the Corporation is the continuing corporation and which does not result in any reclassification or change of outstanding shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock), or in case of any sale, lease or other disposition to another entity (other than a wholly-owned subsidiary of the Corporation) of all, or substantially all of the assets of the Corporation, each holder of a share of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock shall have the right at any time thereafter, so long as the conversion right hereunder with respect to such share of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock would exist had such event not occurred, to convert such share into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition by a holder of the number of shares of Common Stock into which such shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock might have been converted immediately prior to such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition. In the



event of such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition, effective provision shall be made in the certificate of incorporation of the resulting or surviving corporation or otherwise for the protection of the conversion right of the shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock that shall be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion of the shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock into which such shares of Series A Preferred Stock might have been converted immediately prior to such event. The Corporation shall not have the power to be a party to any merger, consolidation or recapitalization pursuant to which any holder of shares of Series A Preferred Stock would be required to take (x) any voting securities, the voting provisions of which would cause such holder to violate any law, regulation or other requirement of any governmental body applicable to such holder or (y) any securities convertible into voting securities, the voting provisions of which if such conversion took place would cause such holder to violate any law, regulation or other requirement of any governmental body applicable to such holder other than securities which are specifically provided to be convertible only in the event that such conversion may occur without any such violation.

(iii) Manner of Effecting Conversion. To convert Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock into Series A Non-Voting Preferred Stock or Series A Voting Preferred Stock, as the case may be, a holder must: (w) complete and sign a conversion notice on the back of the certificate representing Series A Preferred Stock or deliver written notice to the Corporation (or, if a conversion agent has been designated by the Corporation, to such agent (the "Series A Preferred Stock Conversion Agent")); (x) surrender the Series A Preferred Stock certificate to the Series A Preferred Stock Conversion Agent, in a written notice, or if no Series A Preferred Stock Conversion Agent is so designated, to the Corporation; (y) if the shares are being issued in a name other than that of the holder, furnish appropriate endorsements and transfer documents if required by the registrar for the Corporation's stock or the Series A Preferred Stock Conversion Agent; and (z) if the shares are being issued in a name other than that of the holder, pay any transfer tax or similar tax if required by Section 5(l)(iv). Except in the case of a conversion subject to the second paragraph of Section 5(l)(i) hereof, the date on which the holder of Series A Preferred Stock satisfies all of the foregoing requirements (w) through (y) is the conversion date. In the case of a conversion subject to the second paragraph of Section 5(l)(i) hereof, the conversion shall be deemed effective upon expiration of the Series A Preferred Stock Deferral Period referred to therein, and, at such time, the person(s) in whose name or names any certificate(s) evidencing the converted shares are to be issued upon such conversion shall be deemed to have become the holder(s) of record of the converted shares. As soon as practicable, the Corporation shall deliver, itself or through the Series A Preferred Stock Conversion Agent, a certificate for the number of shares of Series A Preferred Stock issuable upon the conversion, calculated in accordance with Section 5(l)(i) or 5(l)(ii), as the case may be. The person or persons in whose name the certificate or certificates are registered shall be treated as a stockholder or stockholders of record on or after the conversion date. If less than all the shares represented by the Series A Preferred Stock certificate are being converted, a new stock certificate representing the unconverted shares shall be promptly issued by the Corporation to the holder thereof.

(iv) Transfer Taxes, Etc. If a holder converts shares of Series A Preferred Stock, the Corporation shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Series A Non-Voting Preferred Stock or Series A Voting Preferred Stock, as the case may be, upon such conversion. However, the holder shall pay any such tax which is due if and because the shares are issued in a name other than that of such holder.

(v) Issuance of Shares. The Corporation shall reserve out of its authorized but unissued Series A Preferred Stock and its Series A Preferred Stock held in treasury sufficient shares of Series A Preferred

Stock to permit the conversions of all Series A Preferred Stock pursuant to Subsection 5(l)(i) or 5(l)(ii). All shares of Series A Preferred Stock issued upon such conversion shall be fully paid and non-assessable.

Shares of Series A Voting Preferred Stock and Series A Non-Voting Preferred Stock that are converted into shares of the other class shall not be reissued, except for reissuance in connection with the conversion of shares of Series A Voting Preferred Stock or Series A Non-Voting Preferred Stock held by Regulated Stockholders into shares of Series A Non-Voting Preferred Stock or Series A Voting Preferred Stock, respectively.

Section 6. Cancellation of Series A Preferred Stock. Except as provided in the last paragraph of Section 5(l), no share or shares of Series A Preferred Stock acquired by the Corporation by reason of redemption, conversion or otherwise shall be reissued, and all such shares (other than shares to the extent required for reissuance upon any conversion under Section 5(l)) shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

Section 7. Miscellaneous.

(a) Notices. Except as otherwise expressly provided hereunder, all notices shall be in writing and shall be delivered personally or by registered or certified mail, return receipt requested and postage prepaid, or by overnight courier services, charges prepaid, and shall be deemed to have been given when personally delivered, one (1) business day after the same is delivered to such an overnight courier service, charges prepaid, or three (3) business days after the same has been so deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed (i) to the Corporation, at its principal executive offices and (ii) to any holder of Series A Preferred Stock, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

(b) Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Series A Preferred Stock. Upon the surrender of any certificate representing Series A Preferred Stock at such place, the Corporation shall, at the request of the record holder of such certificate, 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 Series A Preferred Stock represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares of Series A Preferred Stock as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate.

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

(d) Amendment and Waiver. No amendment, modification or waiver with respect to any provision of this Part 6 hereof shall be binding or effective, and no change in the terms of such Articles

may be accomplished by merger or consolidation of the Corporation with another corporation or entity, without the prior written consent of the holders of at least 60% of the shares of Series A Preferred Stock outstanding at the time such action is taken; provided, however, that the percentage specified in Section 5(k)(ii), and any percentage which may at any time be specified in Section 4(a)(i), cannot be modified without the prior written consent of at least 80% of the holders of the shares of Series A Preferred Stock outstanding at the time such action is to be taken.

(e) Definitions. Capitalized terms used but not defined in this Articles of Amendment shall have the respective meanings ascribed to them in the Purchase Agreement (the "Purchase Agreement"), dated as of December 18, 1998, between the Corporation and the purchasers of subordinated notes and warrants named therein.

7. Series B Preferred Stock.

Section 1. Voting Rights. (a) Except as otherwise required by law or expressly provided herein, the holders of shares of Series B Voting Preferred Stock shall be entitled to vote on all matters submitted to a vote of the stockholders of the Corporation and shall have such number of votes equal to the number of shares of Voting Common Stock into which such holders' shares of Series B Voting Preferred Stock are convertible pursuant to the provisions hereof at the record date for the determination of stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise required by law or expressly provided herein, the holders of shares of Series A Voting Preferred Stock, Series B Voting Preferred Stock and Voting Common Stock shall vote together and not as separate classes.

(b) Except as otherwise required by law or expressly provided herein, the holders of shares of Series B Non-Voting Preferred Stock shall not be entitled to vote on any matter submitted to a vote of the stockholders of the Corporation, except that such holders shall be entitled to vote as a separate class on any amendment, repeal or modification of any provision of the Articles of Incorporation of the Corporation that adversely affects the powers, preferences or special rights of the Series B Non-Voting Preferred Stock in a manner different than the adverse effect on the powers, preferences or special rights of the Series B Voting Preferred Stock.

(c) Any amendment, repeal or modification of any provision of the Articles of Incorporation of the Corporation that adversely affects the powers, preferences or special rights of the Series B Non-Voting Preferred Stock and the Series B Voting Preferred Stock in the same manner must be submitted to a vote of the Series B Non-Voting Preferred Stock and the Series B Voting Preferred Stock considered as a single class (with each share of Series B Preferred Stock having one vote).

Section 2. Dividend Rights. (a) When and as declared by the Board, and to the extent permitted under applicable law, the Corporation shall pay preferential dividends to the holders of Series B Preferred Stock as provided in this Section 2. Except as otherwise provided herein, dividends on each share of Series B Preferred Stock accrue on a daily basis at a rate of seven percent (7%) per annum (the "Series B Dividend Rate") of the sum of the Series B Liquidation Value plus all accumulated and unpaid dividends thereon, from and including the date of issuance of such share of Series B Preferred Stock to and including the date on which the Series B Liquidation Value of such share of Series B Preferred Stock plus all accumulated and accrued and unpaid dividends thereon is paid or such Series B Preferred Stock is converted into Common Stock. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Such dividends shall be cumulative such that all accumulated and accrued and

unpaid dividends shall be fully paid or declared with funds irrevocably set apart for payment before any dividend, distribution or payment can be made with respect to any Series B Junior Securities. The date on which the Corporation initially issues any share of Series B Preferred Stock shall be deemed to be its "date of issuance" regardless of the number of times transfer of such share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such share. "Series B Liquidation Value" of any share of Series B Preferred Stock as of any particular date will be equal to \$3.60 (adjusted appropriately in the event the shares of Series B Preferred Stock are subdivided into a greater number, whether by stock split, stock dividend or otherwise, or combined into a lesser number, whether by reverse stock split or otherwise). "Series B Junior Securities" means any equity securities of the Corporation other than the Series B Preferred Stock.

(b) March 31, June 30, September 30, and December 31 of each year shall constitute "Series B Dividend Reference Dates" for purposes hereof. To the extent not paid on each Series B Dividend Reference Date, all dividends which have accumulated and accrued on each share of Series B Preferred Stock during the twelve-month period ending upon each December 31 shall be accumulated and shall remain accumulated and unpaid dividends with respect to such share of Series B Preferred Stock until paid.

(c) Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accumulated and accrued with respect to all outstanding shares of Series B Preferred Stock, such payment shall be distributed ratably among the holders of such shares based upon the number of shares of such series held by each such holder.

(d) No dividends shall be declared or paid, or set aside for payment, on any Series B Junior Securities until all accumulated and accrued dividends have been declared and paid on the Series B Preferred Stock.

### Section 3. Liquidation Rights.

(a) In the event of any Liquidation, each holder of shares of Series B Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment or declaration and setting apart for payment of any amount shall be made in respect of Series B Junior Securities, an amount per share of Series B Preferred Stock held by such holder equal to the greater of (i) the sum of \$3.60 per share of Series B Preferred Stock held by such holder (such amount to be adjusted proportionately in the event the shares of Series B Preferred Stock are subdivided by any means into a greater number or combined by any means into a lesser number) plus all accumulated and accrued but unpaid dividends on such share of the Series B Preferred Stock and (ii) an amount that would be received by such holder if all shares of Series A Preferred Stock and Series B Preferred Stock were converted into Common Stock immediately prior to such Liquidation (the greater of such sum is referred to herein as the "Series B Liquidation Preference"). If, upon any Liquidation, the assets to be distributed to the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such stockholders of the full preferential amount aforesaid, then all of the assets of the Corporation to be distributed shall be distributed ratably to the holders of Series B Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(b) For purposes of this Section 3, the merger or consolidation of the Corporation with or into any other entity or entities, or the merger of any other entity or entities into the Corporation, shall not be treated as a Liquidation.

(c) Nothing contained in this Section 3 shall be deemed to prevent any holder of Series B Preferred Stock from exercising such holder's right of conversion pursuant to Section 5 hereof with respect to any share of Series B Preferred Stock at any time prior to the Liquidation including after the giving of any notice of such Liquidation.

#### Section 4. Redemption.

(a) (i) Upon the request of a holder of outstanding shares of Series B Preferred Stock, the Corporation shall redeem all shares of Series B Preferred Stock outstanding on the date specified by such holder on or after May 15, 2003 (the "Series B Mandatory Redemption Date") at the Series B Liquidation Preference plus all accumulated and accrued but unpaid dividends thereon to the Series B Mandatory Redemption Date (the "Series B Mandatory Redemption Price"). Within five (5) days after receipt of any such notice, the Corporation shall give written notice (the "Corporate Notice") of such request by overnight courier (accompanied by a copy of the Corporation's most recent audited and unaudited financial statements) to all holders of shares of Series A Preferred Stock and Series B Preferred Stock (the "Preferred Shares"). Within twenty (20) days after receipt of the Corporate Notice, the holders of Preferred Shares may request the Corporation to redeem all or any portion of the Preferred Shares held by such holders by delivery of written notice to the Corporation. The Corporation shall be required to redeem that number of Preferred Shares requested to be redeemed at a price per share equal to the Series A Mandatory Redemption Price or Series B Mandatory Redemption Price, as applicable, within fifty (50) days after receipt of the initial redemption request (the "Mandatory Redemption Date"), subject to the provisions hereinafter set forth.

(ii) For each Preferred Share that is to be redeemed on the Mandatory Redemption Date, the Corporation shall be obligated to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such Preferred Share) an amount in immediately available funds equal to the Series A Mandatory Redemption Price or Series B Mandatory Redemption Price, as applicable.

(b) The funds of the Corporation legally available for the redemption of the Preferred Shares on the Mandatory Redemption Date shall be used first to redeem the shares of Series B Preferred Shares requested to be redeemed. If the funds of the Corporation legally available for the redemption of the Series B Preferred on the Mandatory Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock to be redeemed on such date, those funds which are legally available shall be used to pay any and all accumulated and accrued but unpaid dividends on the shares of Series B Preferred Stock to be redeemed, and thereafter, to redeem the shares of Series B Preferred Stock to be redeemed on such Mandatory Redemption Date, paid to the holders of the Series B Preferred Stock ratably in proportion to the number of shares of Series B Preferred Stock to be redeemed held by each such holder on the Mandatory Redemption Date. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series B Preferred Stock, such funds shall immediately be used to redeem the balance of the shares of Series B Preferred Stock which the Corporation had become obligated to redeem but had not redeemed, paid to the holders of the shares of Series B Preferred Stock to be redeemed ratably in proportion to the number of shares of Series B Preferred Stock to be redeemed held by each such holder on the date such funds become legally available.

(c) After all shares of Series B Preferred Stock to be redeemed on the Mandatory Redemption Date have been redeemed as provided above, then the funds of the Corporation legally

available for the redemption of the Preferred Shares shall be used to redeem the shares of Series A Preferred Stock as provided in this subsection (c). If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on the Mandatory Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed, those funds which are legally available shall be used first, to pay any and all accumulated and accrued but unpaid dividends on the shares of Series A Preferred Stock to be redeemed, and thereafter, to redeem the shares of Series A Preferred Stock to be redeemed, paid to the holders of the shares of Series A Preferred Stock to be redeemed ratably in proportion to the number of shares of Series A Preferred Stock to be redeemed held by each such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds shall immediately be used to redeem the balance of the shares of Series A Preferred Stock which the Corporation had become obligated to redeem but had not redeemed, paid to the holders of the shares of Series A Preferred Stock to be redeemed ratably in proportion to the number of shares of Series A Preferred Stock to be redeemed held by each such holder on the date such funds become legally available.

(d) Nothing contained in this Section 4 shall be deemed to prevent any holder of Series B Preferred Stock from exercising such holder's right of conversion pursuant to Section 5 hereof with respect to any share of Series B Preferred Stock at any time subsequent to the required redemption date thereof and prior to the payment of the redemption price therefor.

#### Section 5. Conversion.

##### (a) Conversion Procedure.

(i) Any holder of shares of Series B Voting Preferred Stock may at any time (including at any time after a date scheduled for the redemption of such shares on which the Corporation defaults in, or is prohibited from making, the payment of the redemption price but before the payment of such redemption price is made) convert all or any number of such shares held by such holder into a number of shares of Voting Common Stock computed by dividing (A) the sum of (1) the number of such shares to be converted multiplied by \$3.60 plus (2) the amount of accumulated and accrued but unpaid dividends on such shares to be converted by (B) the Series B Conversion Price then in effect. Any holder of shares of Series B Non-Voting Preferred Stock may at any time (including at any time after a date scheduled for the redemption of such shares on which the Corporation defaults in, or is prohibited from making, the payment of the redemption price but before the payment of such redemption price is made) convert all or any number of such shares held by such holder into a number of shares of Non-Voting Common Stock computed by dividing (A) the sum of (1) the number of such shares to be converted multiplied by \$3.60 plus (2) the amount of accumulated and accrued but unpaid dividends on such shares to be converted by (B) the Series B Conversion Price then in effect.

(ii) Each conversion of shares of Series B Preferred Stock will be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing such shares to be converted have been surrendered at the principal office of the Corporation. At such time as such conversion has been effected, the rights of the holder of such shares of Series B Preferred Stock as such holder will cease and the person (or entity) or persons (or entities) in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iii) As soon as possible after a conversion has been effected (but in any event within three business days), the Corporation will deliver to the converting holder:

(A) a certificate or certificates representing the number of shares of Voting Common Stock or Non-Voting Common Stock, as the case may be, issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified; and

(B) a certificate representing any shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock, as the case may be, which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(iv) The issuance of certificates for shares of Voting Common Stock or Non-Voting Common Stock, as the case may be, upon conversion of shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock, respectively, will be made without charge to the holders of such shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Voting Common Stock or Non-Voting Common Stock. Upon conversion of each share of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock, as the case may be, the Corporation will take all such actions as are necessary in order to insure that the Voting Common Stock or Non-Voting Common Stock issuable with respect to such conversion will be validly issued, fully paid and nonassessable.

(v) The Corporation will not close its books against the transfer of shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock or of Voting Common Stock or Non-Voting Common Stock issued or issuable upon conversion of shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock, respectively, in any manner which interferes with the timely conversion of such shares.

(vi) If any fractional interest in a share of Voting Common Stock or Non-Voting Common Stock would, except for the provisions of this sub-paragraph (vi), be deliverable upon any conversion of shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock, respectively, the Corporation, in lieu of delivering the fractional share therefor, will pay an amount to the holder thereof equal to the Market Price of such fractional interest as of the date of conversion.

(b) Series B Conversion Price.

(i) The initial Series B Conversion Price for the Series B Preferred Stock will be \$3.60. In order to prevent dilution of the conversion rights granted under this Section 5, the Series B Conversion Price will be subject to adjustment from time to time pursuant to this Section 5.

(ii) If and whenever on or after the original date of issuance of shares of Series B Preferred Stock, the Corporation issues or sells, or in accordance with Section 5(c) is deemed to have issued or sold, any share of its Common Stock for a consideration per share less than the Series B Conversion Price in effect, then forthwith upon such issuance or sale, or deemed issuance or sale, the Series B Conversion Price will be reduced, in order to increase the number

of shares of Common Stock into which the Series B Preferred Stock is convertible, to that price per share equal to the consideration received for the share issued and sold, or deemed issued and sold; provided, however, that any additional share of Common Stock issued or sold (or deemed issued or sold) without consideration shall be deemed to have been issued or sold for \$.001 per share.

(c) Effect on Series B Conversion Price of Certain Events. For purposes of determining the adjusted Series B Conversion Price under Section 5(b), the following will be applicable:

(i) Issuance of Rights or Options. If the Corporation in any manner grants any rights or options to subscribe for or to purchase Common Stock or any stock or other securities convertible into or exchangeable for Common Stock (such rights or options being herein called "Options" and such convertible or exchangeable stock or securities being herein called "Convertible Securities") and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Series B Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities will be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. For purposes of this paragraph, the "price per share for which Common Stock is issuable" will be determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting 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 all 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 Series B Conversion Price will 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 share for which Common Stock is issuable upon such conversion or exchange is less than the Series B 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 will be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" will 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 Series B Conversion Price will 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 Series B Conversion Price had been or are to be made pursuant to other provisions of this Section 5, no further adjustment of the Series B Conversion Price will 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 change at any time (other than solely through the operation of anti-dilution provisions similar to those contained herein), the Series B Conversion Price in effect at the time of such change will be readjusted to the Series B 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 changed conversion rate, as the case may be, at the time initially granted, issued or sold.

(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 Series B Conversion Price then in effect hereunder will be adjusted to the Series B 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. No adjustment made pursuant to this paragraph shall have the effect of increasing the Series B Conversion Price by an amount in excess of the amount of the adjustment made in respect of the issuance of such Options or Convertible Securities.

(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 therefor will be deemed to be the amount received by the Corporation therefor (net of any issuance expenses, discounts and commissions). In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Corporation will be the Market Price thereof as of the date of receipt. If any Common Stock, Option or Convertible Security is issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving corporation as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash and securities will be reasonably determined in good faith by the Board.

(vi) Integrated Transactions. In case any Option is issued in connection with the issue or sale of other 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 will be deemed to have been issued without consideration.

(vii) Treasury Shares. The number of shares of Common Stock outstanding at any given time does 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 will 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 (A) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (B) to subscribe for or purchase Common

Stock, Options or Convertible Securities, then for purposes of this Section 5 such record date will 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.

(ix) Certain Events. If any event occurs of the type contemplated by the provisions of this Section 5 but not expressly provided for by such provisions (including, but not limited to, the granting of stock or capital appreciation rights, phantom stock rights or other rights with equity features), then the Board shall make an appropriate adjustment in the Series B Conversion Price so as to protect the rights of the holders of Series B Preferred Stock; provided that no such adjustment shall increase the Series B Conversion Price as otherwise determined pursuant to this Section 5 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series B Preferred Stock.

(x) Certain Exceptions. Anything herein to the contrary notwithstanding, no adjustment will be made to the Series B Conversion Price by reason of the issuance of (i) the Warrants, the Old Warrants, the Bridge Loan Warrants, the Additional Warrants, the Contingent Warrants and the Fee Warrants, (ii) shares of Common Stock issuable upon exercise of the Warrants, the Old Warrants, the Bridge Loan Warrants, the Additional Warrants, the Contingent Warrants and the Fee Warrants, (iii) shares of Series B Preferred Stock issuable upon conversion of the Notes, (iv) shares of Series A Preferred Stock issuable upon conversion of the subordinated notes issued pursuant to the Original Agreement and the Amended and Restated Original Agreement, (v) shares of Common Stock issuable upon conversion of the Series A Preferred Stock and Series B Preferred Stock, (vi) options granted and to be granted, and shares of Common Stock issuable upon exercise of such options, pursuant to the Stock Option Plan and (vii) the issuance of shares of Common Stock upon a subdivision of the Common Stock for which an adjustment to the Series B Conversion Price is made pursuant to Section 5(d).

(d) 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 Series B Conversion Price in effect immediately prior to such subdivision will 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 Series B Conversion Price in effect immediately prior to such combination will be proportionately increased.

(e) Reorganization, Reclassification, Consolidation, Merger or Sale. Any capital reorganization, reclassification, consolidation, merger or sale of all or substantially all of the Corporation's assets to another person or entity which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as an "Organic Change". Prior to the consummation of any Organic Change, the Corporation will make appropriate provisions to insure that each of the holders of Series B Preferred Stock will thereafter have the right to acquire and receive, in lieu of or in addition to the shares of Common Stock immediately theretofore acquirable and receivable upon the conversion of such holder's shares of Series B Preferred Stock, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted his Series B Preferred Stock immediately prior to such Organic Change. In any such case, the Corporation will make appropriate provisions to insure that the provisions of this Section 5 will thereafter

be applicable to the Series B Preferred Stock (including, in the case of any such consolidation, merger or sale in which the successor corporation or purchasing corporation is other than the Corporation, an immediate adjustment of the Series B Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Common Stock acquirable and receivable upon conversion of shares of Series B Preferred Stock, if the value so reflected is less than the Series B Conversion Price in effect immediately prior to such consolidation, merger or sale). The Corporation will not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from consolidation or merger or the corporation purchasing such assets assumes by written instrument, the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(f) Notices.

(i) Immediately upon any adjustment of the Series B Conversion Price, the Corporation will give written notice thereof to all holders of shares of Series B Preferred Stock.

(ii) The Corporation will give written notice to all holders of shares of Series B Preferred Stock at least 20 days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Organic Change or Liquidation.

(iii) The Corporation will also give written notice to the holders of shares of Series B Preferred Stock at least 20 days prior to the date on which any Organic Change or Liquidation will take place.

(g) Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series B Preferred Stock, such number of its shares of Common Stock (both Voting Common Stock and Non-Voting Common Stock) as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series B Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series B Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(h) Taxes and Charges. The Corporation will pay all taxes and other governmental charges that may be imposed in respect of the issue or delivery of shares of Common Stock upon conversion of shares of Series B Preferred Stock.

(i) Rounding. All calculations under this Section 5 shall be made to the nearest cent or to the nearest one-tenth of a share, as the case may be.

(j) Protection of Conversion Rights. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issuance or sale of securities or any other voluntary action, for the purpose of avoiding or seeking 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 5 and will take all actions that may be necessary or appropriate in order to protect against impairment the rights of the holders of shares of Series B Preferred Stock to convert such shares.

(k) Automatic Conversion. Immediately upon the closing of a Qualified Public Offering, the outstanding shares of Series B Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of the Series B Preferred Stock being converted are either delivered to the Corporation or any transfer agent or the holder complies with the provisions of Section 7(c) hereof. Upon the automatic conversion of the Series B Preferred Stock, the holder of such Series B Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of any transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder, promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series B Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(ii) Each share of Series B Voting Preferred Stock and Series B Non-Voting Preferred Stock shall automatically be converted into shares of Voting Common Stock and Non-Voting Common Stock, respectively, at the Series B Conversion Price then in effect immediately upon the vote or written consent of the holders of at least 66-2/3% of the then outstanding Series B Voting Preferred Stock and Series B Non-Voting Preferred Stock, voting for this purpose as a single class with each share of Series B Voting Preferred Stock and each share of Series B Non-Voting Preferred Stock having one vote. Upon such vote or written consent, the outstanding shares of Series B Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of the Series B Preferred Stock being converted are either delivered to the Corporation or any transfer agent or the holder complies with the provisions of Section 7(c) hereof. Upon the automatic conversion of the Series B Preferred Stock, the holder of such Series B Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of any transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder, promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series B Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(l) Conversion of Series B Non-Voting Preferred Stock and Series B Voting Preferred Stock. (i) Upon compliance with the provisions of Section 5(l)(iii) below, any Regulated Stockholder shall be entitled to convert, at any time and from time to time, any and all of the shares of Series B Voting Preferred Stock held by such Regulated Stockholder into the same number of shares of Series B Non-Voting Preferred Stock.

The Corporation shall not convert or directly or indirectly purchase or otherwise acquire any shares of Series B Voting Preferred Stock or take any other action affecting the voting rights of the holders of such shares, if such action will increase the percentage of outstanding voting securities of any class or series (including the Series B Voting Preferred Stock) owned by or controlled by any Regulated Stockholder (other than the stockholder which requested that the Corporation take such action, or which otherwise waives in writing its rights under this Section 5(l)(i)) unless the Corporation gives written

notice (the "Series B Preferred Stock First Notice") of such action to each Regulated Stockholder. The Corporation will defer making any conversion, purchase or other acquisition or taking any such other action for a period of 30 days (the "Series B Preferred Stock Deferral Period") after giving the Series B Preferred Stock First Notice in order to allow each such Regulated Stockholder to determine whether it wishes to convert or take any other action with respect to the Series B Voting Preferred Stock it owns, controls or has the power to vote, and if any such Regulated Stockholder then elects to convert any shares of the Series B Voting Preferred Stock, it shall notify the Corporation in writing within 20 days of the issuance of the Series B Preferred Stock First Notice, in which case the Corporation (x) shall promptly notify from time to time each other Regulated Stockholder holding shares of each proposed conversion and the proposed transactions, and (y) effect the conversion requested by all Regulated Stockholders in response to the notices issued pursuant to this Section 5(l)(i) at the end of the Series B Preferred Stock Deferral Period or as soon thereafter as is reasonably practicable. Notwithstanding anything to the contrary contained in the Articles of Incorporation of the Corporation, the Corporation will not directly or indirectly redeem, purchase, acquire or take any other action affecting outstanding Series B Voting Preferred Stock if such action will increase above 24.9% the percentage of outstanding Series B Preferred Stock owned by or controlled by any Regulated Stockholder and its Affiliates (other than a stockholder which waives in writing its rights under this Section 5(l)(i)).

(ii) Upon compliance with the provisions of Section 5(l)(iii) below, any holder of shares of Series B Non-Voting Preferred Stock shall be entitled to convert, at any time and from time to time, any and all shares of Series B Non-Voting Preferred Stock held by such holder into the same number of shares of Series B Voting Preferred Stock; provided, however, that no holder of any shares of Series B Non-Voting Preferred Stock shall be entitled to convert any such shares into shares of Series B Voting Preferred Stock, and the Corporation shall not be required to record such conversion, to the extent that, as a result of such conversion, such holder and its Affiliates, directly or indirectly, would own, control or have the power to vote a greater number of shares of Series B Voting Preferred Stock or other securities of any kind issued by the Corporation than such holder and its Affiliates shall be permitted to own, control or to have the power to vote under any law, regulation, rule or other requirement of any governmental authority at the time applicable to such holder or its Affiliates; provided, further, that the Corporation shall be entitled to rely without independent verification upon the representation of any holder that the conversion of shares by such holder is permitted under applicable law, and in no event shall the Corporation be liable to any such holder or any third party arising from any such conversion whether or not permitted by applicable law.

If the Corporation shall in any manner subdivide (by stock split, reclassification, stock dividend or otherwise) or combine (by reverse stock split, reclassification or otherwise) the outstanding shares of the Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock, the outstanding shares of the other class shall be proportionately subdivided, reclassified or combined, as the case may be, and effective provision shall be made for the protection of all conversion rights hereunder. In case of any reorganization, reclassification or change of shares of Series B Voting Preferred Stock (other than a change in par value, or from par value to no par value as a result of a subdivision or combination), or in case of any consolidation of the Corporation with one or more other corporations or a merger of the Corporation with another entity (other than a consolidation or merger in which the Corporation is the continuing corporation and which does not result in any reclassification or change of outstanding shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock), or in case of any sale, lease or other disposition to another entity (other than a wholly-owned subsidiary of the Corporation) of all, or substantially all of the assets of the Corporation, each holder of a share of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock shall have the right at any time thereafter, so long as the conversion right hereunder with respect to such share of Series B Voting Preferred Stock or Series B

Non-Voting Preferred Stock would exist had such event not occurred, to convert such share into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition by a holder of the number of shares of Common Stock into which such shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock might have been converted immediately prior to such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition. In the event of such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition, effective provision shall be made in the certificate of incorporation of the resulting or surviving corporation or otherwise for the protection of the conversion right of the shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock that shall be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion of the shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock into which such shares of Series B Preferred Stock might have been converted immediately prior to such event. The Corporation shall not have the power to be a party to any merger, consolidation or recapitalization pursuant to which any holder of shares of Series B Preferred Stock would be required to take (x) any voting securities, the voting provisions of which would cause such holder to violate any law, regulation or other requirement of any governmental body applicable to such holder or (y) any securities convertible into voting securities, the voting provisions of which if such conversion took place would cause such holder to violate any law, regulation or other requirement of any governmental body applicable to such holder other than securities which are specifically provided to be convertible only in the event that such conversion may occur without any such violation.

(iii) Manner of Effecting Conversion. To convert Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock into Series B Non-Voting Preferred Stock or Series B Voting Preferred Stock, as the case may be, a holder must: (w) complete and sign a conversion notice on the back of the certificate representing Series B Preferred Stock or deliver written notice to the Corporation (or, if a conversion agent has been designated by the Corporation, to such agent (the "Series B Preferred Stock Conversion Agent")); (x) surrender the Series B Preferred Stock certificate to the Series B Preferred Stock Conversion Agent, in a written notice, or if no Series B Preferred Stock Conversion Agent is so designated, to the Corporation; (y) if the shares are being issued in a name other than that of the holder, furnish appropriate endorsements and transfer documents if required by the registrar for the Corporation's stock or the Series B Preferred Stock Conversion Agent; and (z) if the shares are being issued in a name other than that of the holder, pay any transfer tax or similar tax if required by Section 5(l)(iv). Except in the case of a conversion subject to the second paragraph of Section 5(l)(i) hereof, the date on which the holder of Series B Preferred Stock satisfies all of the foregoing requirements (w) through (y) is the conversion date. In the case of a conversion subject to the second paragraph of Section 5(l)(i) hereof, the conversion shall be deemed effective upon expiration of the Series B Preferred Stock Deferral Period referred to therein, and, at such time, the person(s) in whose name or names any certificate(s) evidencing the converted shares are to be issued upon such conversion shall be deemed to have become the holder(s) of record of the converted shares. As soon as practicable, the Corporation shall deliver, itself or through the Series B Preferred Stock Conversion Agent, a certificate for the number of shares of Series B Preferred Stock issuable upon the conversion, calculated in accordance with Section 5(l)(i) or 5(l)(ii), as the case may be. The person or persons in whose name the certificate or certificates are registered shall be treated as a stockholder or stockholders of record on or after the conversion date. If less than all the shares represented by the Series B Preferred Stock certificate are being converted, a new stock certificate representing the unconverted shares shall be promptly issued by the Corporation to the holder thereof.

(iv) Transfer Taxes, Etc. If a holder converts shares of Series B Preferred Stock, the Corporation shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Series B

Non-Voting Preferred Stock or Series B Voting Preferred Stock, as the case may be, upon such conversion. However, the holder shall pay any such tax which is due if and because the shares are issued in a name other than that of such holder.

(v) Issuance of Shares. The Corporation shall reserve out of its authorized but unissued Series B Preferred Stock and its Series B Preferred Stock held in treasury sufficient shares of Series B Preferred Stock to permit the conversions of all Series B Preferred Stock pursuant to Subsection 5(l)(i) or 5(l)(ii). All shares of Series B Preferred Stock issued upon such conversion shall be fully paid and non-assessable.

Shares of Series B Voting Preferred Stock and Series B Non-Voting Preferred Stock that are converted into shares of the other class shall not be reissued, except for reissuance in connection with the conversion of shares of Series B Voting Preferred Stock or Series B Non-Voting Preferred Stock held by Regulated Stockholders into shares of Series B Non-Voting Preferred Stock or Series B Voting Preferred Stock, respectively.

Section 6. Cancellation of Series B Preferred Stock. Except as provided in the last paragraph of Section 5(l), no share or shares of Series B Preferred Stock acquired by the Corporation by reason of redemption, conversion or otherwise shall be reissued, and all such shares (other than shares to the extent required for reissuance upon any conversion under Section 5(l)) shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

Section 7. Miscellaneous.

(a) Notices. Except as otherwise expressly provided hereunder, all notices shall be in writing and shall be delivered personally or by registered or certified mail, return receipt requested and postage prepaid, or by overnight courier services, charges prepaid, and shall be deemed to have been given when personally delivered, one (1) business day after the same is delivered to such an overnight courier service, charges prepaid, or three (3) business days after the same has been so deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed (i) to the Corporation, at its principal executive offices and (ii) to any holder of Series B Preferred Stock, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

(b) Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Series B Preferred Stock. Upon the surrender of any certificate representing Series B Preferred Stock at such place, the Corporation shall, at the request of the record holder of such certificate, 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 Series B Preferred Stock represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares of Series B Preferred Stock as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate.

(c) Replacement of Certificates. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series B 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 its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate,

the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Series B Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate.

(d) Amendment and Waiver. No amendment, modification or waiver with respect to any provision of this Part 7 hereof shall be binding or effective, and no change in the terms of such Articles may be accomplished by merger or consolidation of the Corporation with another corporation or entity, without the prior written consent of the holders of at least 66-2/3% of the shares of Series B Preferred Stock outstanding at the time such action is taken.

(e) Definitions. Capitalized terms used but not defined in this Articles of Amendment shall have the respective meanings ascribed to them in the Purchase Agreement.

8. Series C Preferred Stock.

Section 1. Voting Rights.

(a) Except as otherwise required by law or expressly provided herein, the holders of shares of Series C Voting Preferred Stock shall be entitled to vote on all matters submitted to a vote of the stockholders of the Corporation and shall have such number of votes equal to the number of shares of Voting Common Stock into which such holders' shares of Series C Voting Preferred Stock are convertible pursuant to the provisions hereof at the record date for the determination of stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise required by law or expressly provided herein, the holders of shares of Series A Voting Preferred Stock, Series B Voting Preferred Stock, Series C Voting Preferred Stock and Voting Common Stock shall vote together and not as separate classes.

(b) Except as otherwise required by law, the holders of shares of Series C Non-Voting Preferred Stock shall not be entitled to vote on any matter submitted to a vote of the stockholders of the Corporation.

(c) Any amendment, repeal or modification of any provision of the Articles of Incorporation of the Corporation that adversely affects the powers, preferences or special rights of the Series C Non-Voting Preferred Stock and the Series C Voting Preferred Stock in the same manner must be submitted to a vote of the Series C Non-Voting Preferred Stock and the Series C Voting Preferred Stock considered as a single class (with each share of Series C Preferred Stock having one vote).

Section 2. Dividend Rights. To the extent that any dividends are declared on the Common Stock, the holders of shares of Series C Preferred Stock shall be entitled to share in such dividends on an as-if-converted to Common Stock basis.

Section 3. Liquidation Rights.

(a) In the event of any liquidation ("Liquidation"), and prior to and in preference to any payments to be made to holders of Series B Preferred Stock, Series A Preferred Stock or Common Stock, each holder of shares of Series C Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, an amount per share of Series C Preferred Stock held by such holder equal to the sum of \$5.00 (such amount to be adjusted



proportionately in the event the shares of Series C Preferred Stock are subdivided by any means into a greater number or combined by any means into a lesser number) plus all accrued but unpaid dividends on such share of the Series C Preferred Stock (such sum is referred to herein as the "Series C Liquidation Preference"). If, upon any Liquidation, the assets to be distributed to the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such stockholders of the full Series C Liquidation Preference, then all of the assets of the Corporation to be distributed shall be distributed ratably to the holders of Series C Preferred Stock in proportion to the full Series C Liquidation Preference each such holder is otherwise entitled to receive.

(b) After the distribution described in subsection (a) above has been paid, subject to the rights of series of Preferred Stock which may from time to time come into existence, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Series C Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming full conversion of all such Series C Preferred Stock).

(c) A consolidation or merger of this Corporation with or into any other corporation or corporations, or a sale, conveyance or disposition of all or substantially all of the assets of this Corporation or the effectuation by the Corporation of a transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of, shall be deemed to be a Liquidation within the meaning of this Section 3.

(d) Nothing contained in this Section 3 shall be deemed to prevent any holder of Series C Preferred Stock from exercising such holder's right of conversion pursuant to Section 5 hereof with respect to any share of Series C Preferred Stock at any time prior to the Liquidation including after the giving of any notice of such Liquidation.

#### Section 4. Redemption.

(a) Subject to the rights of series of any Preferred Stock which may from time to time come into existence, on or at any time after June \_\_, 2004, this Corporation may at any time it may lawfully do so, at the option of the Board of Directors, redeem in whole or in part the Series C Preferred Stock by paying in cash the greater of (i) the sum of \$5.00 per share of Series C Preferred Stock held by such holder (such amount to be adjusted proportionately in the event the shares of Series C Preferred Stock are subdivided by any means into a greater number or combined by any means into a lesser number) plus all accumulated and accrued but unpaid dividends on such share of the Series C Preferred Stock or (ii) the fair market value of a shares of Series C Preferred Stock as determined in good faith by the Board of Directors (such payment amount is hereinafter referred to as the "Series C Redemption Price"). In the event of any redemption of only a part of the then outstanding Series C Preferred Stock, this Corporation shall effect such redemption pro rata according to the number of shares held by each holder thereof. Subject to the rights of series of any Preferred Stock which may from time to time come into existence, at least 30 but no more than 60 days prior to the date fixed for any redemption of Series C Preferred Stock (the "Optional Redemption Date"), written notice shall be mailed, first class 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 the Series C Preferred Stock to be redeemed, at the address last shown on the records of this corporation for such holder or given by the holder to this corporation for the purpose of notice or if no such address appears or is given at the place where the principal executive office of this corporation is located, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Optional Redemption Date, the Series C Redemption Price, the place at which payment may be obtained and the date on which such holder's conversion rights (as hereinafter

defined) as to such shares terminate and calling upon such holder to surrender to this corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). On or after the Optional Redemption Date, each holder of Series C Preferred Stock to be redeemed shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Series C Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(b) Upon the request of a holder of outstanding shares of Series C Preferred Stock, the Corporation shall redeem all shares of Series C Preferred Stock outstanding on the date specified by such holder on or after June \_\_, 2004 at the Series C Redemption Price. The Corporation shall be required to redeem that number of Preferred Shares requested to be redeemed within fifty (50) days after receipt of the initial redemption request (the "Mandatory Redemption Date"), subject to the provisions hereinafter set forth. If the funds of the Corporation legally available for the redemption of the Series C Preferred Stock on the Mandatory Redemption Date are insufficient to redeem the total number of shares of Series C Preferred Stock to be redeemed on such date, those funds which are legally available shall be paid to the holders of the Series C Preferred Stock ratably in proportion to the number of shares of Series C Preferred Stock to be redeemed held by each such holder on the Mandatory Redemption Date. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series C Preferred Stock, such funds shall immediately be used to redeem the balance of the shares of Series C Preferred Stock which the Corporation had become obligated to redeem but had not redeemed, paid to the holders of the shares of Series C Preferred Stock to be redeemed ratably in proportion to the number of shares of Series C Preferred Stock to be redeemed held by each such holder on the date such funds become legally available.

(c) Nothing contained in this Section 4 shall be deemed to prevent any holder of Series C Preferred Stock from exercising such holder's right of conversion pursuant to Section 5 hereof with respect to any share of Series C Preferred Stock at any time subsequent to the required redemption date thereof and prior to the payment of the redemption price therefore.

## Section 5. Conversion.

### (a) Conversion Procedure.

- (i) Any holder of shares of Series C Voting Preferred Stock may at any time (including at any time after a date scheduled for the redemption of such shares on which the Corporation defaults in, or is prohibited from making, the payment of the redemption price but before the payment of such redemption price is made) convert all or any number of such shares held by such holder into a number of shares of Voting Common Stock computed by dividing (A) the sum of (1) the number of such shares to be converted multiplied by \$5.00 plus (2) the amount of accumulated and accrued but unpaid dividends on such shares to be converted by (B) the Series C Conversion Price then in effect. Any holder of shares of Series C Non-Voting Preferred Stock may at any time (including at any time after a date scheduled for the redemption of such shares on which the Corporation defaults in, or is prohibited from making, the payment of the redemption price but before the payment of such redemption price is made) convert all or any number of such shares held by such holder into a number of shares of Non-Voting Common Stock computed by dividing (A) the sum of (1) the number of such shares to be converted multiplied by \$5.00 plus (2) the amount of accumulated and accrued but unpaid dividends on such shares to be converted by (B) the Series C Conversion Price then in effect.

- (ii) Each conversion of shares of Series C Preferred Stock will be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series C Preferred Stock to be converted, 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.

- (iii) As soon as possible after a conversion has been effected (but in any event within three business days), the Corporation will deliver to the converting holder:

(A) a certificate or certificates representing the number of shares of Voting Common Stock or Non-Voting Common Stock, as the case may be, issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified; and

(B) a certificate representing any shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock, as the case may be, which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

- (iv) The issuance of certificates for shares of Voting Common Stock or Non-Voting Common Stock, as the case may be, upon conversion of shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock, respectively, will be made without charge to the holders of such shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the

related issuance of shares of Voting Common Stock or Non-Voting Common Stock. Upon conversion of each share of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock, as the case may be, the Corporation will take all such actions as are necessary in order to insure that the Voting Common Stock or Non-Voting Common Stock issuable with respect to such conversion will be validly issued, fully paid and nonassessable.

(v) The Corporation will not close its books against the transfer of shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock or of Voting Common Stock or Non-Voting Common Stock issued or issuable upon conversion of shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock, respectively, in any manner which interferes with the timely conversion of such shares.

(vi) If any fractional interest in a share of Voting Common Stock or Non-Voting Common Stock would, except for the provisions of this sub-paragraph (vi), be deliverable upon any conversion of shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock, respectively, the Corporation, in lieu of delivering the fractional share therefor, will pay an amount to the holder thereof equal to the Market Price of such fractional interest as of the date of conversion.

(b) Series C Conversion Price.

(i) The initial Series C Conversion Price for the Series C Preferred Stock will be \$5.00. In order to prevent dilution of the conversion rights granted under this Section 5, the Series C Conversion Price will be subject to adjustment from time to time pursuant to this Section 5.

(ii) If and whenever on or after the original date of issuance of shares of Series C Preferred Stock, the Corporation issues or sells, or in accordance with Section 5(c) is deemed to have issued or sold, any share of its Common Stock for a consideration per share less than the Series C Conversion Price in effect ("Additional Stock") then forthwith upon such issuance or sale, or deemed issuance or sale, the Series C Conversion Price in effect immediately prior to each such issuance shall forthwith be adjusted to a price determined by multiplying such Series C Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including all shares of outstanding Preferred Stock on an as-converted basis, but not including shares excluded by subsection (x) below, plus the number of shares of Common Stock which the aggregate consideration received by the corporation for such issuance of the Additional Stock would purchase at such Series C Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including all shares of outstanding Preferred Stock on an as-converted basis, but not including shares excluded by subsection (x) below, plus the number of shares of such Additional Stock to be issued or sold.

(c) Effect on Series C Conversion Price of Certain Events. For purposes of determining the adjustment to be made to the Series C Conversion Price under Section 5(b), the following will be applicable:

(i) Issuance of Rights or Options. If the Corporation in any manner grants any

rights or options to subscribe for or to purchase Common Stock or any stock or other securities convertible into or exchangeable for Common Stock (such rights or options being herein called "Options" and such convertible or exchangeable stock or securities being herein called "Convertible Securities") and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Series C Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities will be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. For purposes of this paragraph, the "price per share for which Common Stock is issuable" will be determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting 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 all 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 Series C Conversion Price will 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 share for which Common Stock is issuable upon such conversion or exchange is less than the Series C 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 will be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" will 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 Series C Conversion Price will 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 Series C Conversion Price had been or are to be made pursuant to other provisions of this Section 5, no further adjustment of the Series C Conversion Price will 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 change at any time (other than solely through the operation of anti-dilution provisions similar to those contained herein), the Series C Conversion Price in effect at the time of such change will be readjusted to the Series C 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 changed conversion rate, as the case may be, at the time initially granted, issued or sold.

(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 Series C Conversion Price then in effect hereunder will be adjusted to the Series C 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. No adjustment made pursuant to this paragraph shall have the effect of increasing the Series C Conversion Price by an amount in excess of the amount of the adjustment made in respect of the issuance of such Options or Convertible Securities.

(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 therefor will be deemed to be the amount received by the Corporation therefor (net of any issuance expenses, discounts and commissions). In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Corporation will be the Market Price thereof as of the date of receipt. If any Common Stock, Option or Convertible Security is issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving corporation as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash and securities will be reasonably determined in good faith by the Board.

(vi) Integrated Transactions. In case any Option is issued in connection with the issue or sale of other 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 will be deemed to have been issued without consideration.

(vii) Treasury Shares. The number of shares of Common Stock outstanding at any given time does 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 will 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 (A) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then for purposes of this Section 5 such record date will 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.

(ix) Certain Events. If any event occurs of the type contemplated by the provisions of this Section 5 but not expressly provided for by such provisions (including, but not limited to, the granting of stock or capital appreciation rights, phantom stock rights or other rights with equity features), then the Board shall make an appropriate adjustment in the Series C Conversion Price so as to protect the rights of the holders of Series C Preferred Stock; provided that no such adjustment shall increase the Series C Conversion Price as otherwise determined pursuant to this Section 5 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series C Preferred Stock.

(x) Certain Exceptions. Anything herein to the contrary notwithstanding, no

adjustment will be made to the Series C Conversion Price by reason of the issuance of (i) options granted and to be granted, and shares of Common Stock issuable upon exercise of such options, pursuant to the Stock Option Plan and (ii) the issuance of shares of Common Stock upon a subdivision of the Common Stock for which an adjustment to the Series C Conversion Price is made pursuant to Section 5(d).

(d) 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 Series C Conversion Price in effect immediately prior to such subdivision will 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 Series C Conversion Price in effect immediately prior to such combination will be proportionately increased.

(e) Reorganization, Reclassification, Consolidation, Merger or Sale. Any capital reorganization, reclassification, consolidation, merger or sale of all or substantially all of the Corporation's assets to another person or entity which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as an "Organic Change". Prior to the consummation of any Organic Change, the Corporation will make appropriate provisions to insure that each of the holders of Series C Preferred Stock will thereafter have the right to acquire and receive, in lieu of or in addition to the shares of Common Stock immediately theretofore acquirable and receivable upon the conversion of such holder's shares of Series C Preferred Stock, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted his Series C Preferred Stock immediately prior to such Organic Change. In any such case, the Corporation will make appropriate provisions to insure that the provisions of this Section 5 will thereafter be applicable to the Series C Preferred Stock (including, in the case of any such consolidation, merger or sale in which the successor corporation or purchasing corporation is other than the Corporation, an immediate adjustment of the Series C Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Common Stock acquirable and receivable upon conversion of shares of Series C Preferred Stock, if the value so reflected is less than the Series C Conversion Price in effect immediately prior to such consolidation, merger or sale). The Corporation will not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from consolidation or merger or the corporation purchasing such assets assumes by written instrument, the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(f) Notices.

(i) Immediately upon any adjustment of the Series C Conversion Price, the Corporation will give written notice thereof to all holders of shares of Series C Preferred Stock.

(ii) The Corporation will give written notice to all holders of shares of Series C Preferred Stock at least 20 days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Organic Change or Liquidation.

(iii) The Corporation will also give written notice to the holders of shares of Series C

Preferred Stock at least 20 days prior to the date on which any Organic Change or Liquidation will take place.

(g) Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series C Preferred Stock, such number of its shares of Common Stock (both Voting Common Stock and Non-Voting Common Stock) as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series C Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(h) Taxes and Charges. The Corporation will pay all taxes and other governmental charges that may be imposed in respect of the issue or delivery of shares of Common Stock upon conversion of shares of Series C Preferred Stock.

(i) Rounding. All calculations under this Section 5 shall be made to the nearest cent or to the nearest one-tenth of a share, as the case may be.

(j) Protection of Conversion Rights. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issuance or sale of securities or any other voluntary action, for the purpose of avoiding or seeking 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 5 and will take all actions that may be necessary or appropriate in order to protect against impairment the rights of the holders of shares of Series C Preferred Stock to convert such shares.

(k) Automatic Conversion. Each share of Series C Voting Preferred Stock shall automatically be converted into shares of Voting Common Stock and each share of Series C Non-Voting Preferred Stock shall automatically be converted into shares of Non-Voting Common Stock without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent at the Series C Conversion Price at the time in effect for such Series C Preferred Stock immediately upon the consummation of the Corporation's sale of its Common Stock in a bona fide, firm commitment underwriting pursuant to a registration statement under the Securities Act of 1933, as amended, the public offering price of which was not less than \$5.00 per share (adjusted to reflect subsequent stock dividends, stock splits or recapitalization) and \$ 20,000,000.00 in the aggregate. The Corporation, however, shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of the Series C Preferred Stock being converted are either delivered to the Corporation or any transfer agent. Upon the automatic conversion of the Series C Preferred Stock, the holder of such Series C Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of any transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder, promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series C Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(l) Conversion of Series C Non-Voting Preferred Stock and Series C Voting Preferred Stock.



(i) Upon compliance with the provisions of Section 5(l)(iii) below, any Regulated Stockholder shall be entitled to convert, at any time and from time to time, any and all of the shares of Series C Voting Preferred Stock held by such Regulated Stockholder into the same number of shares of Series C Non-Voting Preferred Stock.

The Corporation shall not convert or directly or indirectly purchase or otherwise acquire any shares of Series C Voting Preferred Stock or take any other action affecting the voting rights of the holders of such shares, if such action will increase the percentage of outstanding voting securities of any class or series (including the Series C Voting Preferred Stock) owned by or controlled by any Regulated Stockholder (other than the stockholder which requested that the Corporation take such action, or which otherwise waives in writing its rights under this Section 5(l)(i)) unless the Corporation gives written notice (the "Series C Preferred Stock First Notice") of such action to each Regulated Stockholder. The Corporation will defer making any conversion, purchase or other acquisition or taking any such other action for a period of 30 days (the "Series C Preferred Stock Deferral Period") after giving the Series C Preferred Stock First Notice in order to allow each such Regulated Stockholder to determine whether it wishes to convert or take any other action with respect to the Series C Voting Preferred Stock it owns, controls or has the power to vote, and if any such Regulated Stockholder then elects to convert any shares of the Series C Voting Preferred Stock, it shall notify the Corporation in writing within 20 days of the issuance of the Series C Preferred Stock First Notice, in which case the Corporation (x) shall promptly notify from time to time each other Regulated Stockholder holding shares of each proposed conversion and the proposed transactions, and (y) effect the conversion requested by all Regulated Stockholders in response to the notices issued pursuant to this Section 5(l)(i) at the end of the Series C Preferred Stock Deferral Period or as soon thereafter as is reasonably practicable. Notwithstanding anything to the contrary contained in the Articles of Incorporation of the Corporation, the Corporation will not directly or indirectly redeem, purchase, acquire or take any other action affecting outstanding Series C Voting Preferred Stock if such action will increase above 24.9% the percentage of outstanding Series C Preferred Stock owned by or controlled by any Regulated Stockholder and its Affiliates (other than a stockholder which waives in writing its rights under this Section 5(l)(i)).

(ii) Upon compliance with the provisions of Section 5(l)(iii) below, any holder of shares of Series C Non-Voting Preferred Stock shall be entitled to convert, at any time and from time to time, any and all shares of Series C Non-Voting Preferred Stock held by such holder into the same number of shares of Series C Voting Preferred Stock; provided, however, that no holder of any shares of Series C Non-Voting Preferred Stock shall be entitled to convert any such shares into shares of Series C Voting Preferred Stock, and the Corporation shall not be required to record such conversion, to the extent that, as a result of such conversion, such holder and its Affiliates, directly or indirectly, would own, control or have the power to vote a greater number of shares of Series C Voting Preferred Stock or other securities of any kind issued by the Corporation than such holder and its Affiliates shall be permitted to own, control or to have the power to vote under any law, regulation, rule or other requirement of any governmental authority at the time applicable to such holder or its Affiliates; provided, further, that the Corporation shall be entitled to rely without independent verification upon the representation of any holder that the conversion of shares by such holder is permitted under applicable law, and in no event shall the Corporation be liable to any such holder or any third party arising from any such conversion whether or not permitted by applicable law.

If the Corporation shall in any manner subdivide (by stock split, reclassification, stock dividend or otherwise) or combine (by reverse stock split, reclassification or otherwise) the outstanding shares of the Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock, the outstanding shares of the other class shall be proportionately subdivided, reclassified or combined, as the case may

be, and effective provision shall be made for the protection of all conversion rights hereunder. In case of any reorganization, reclassification or change of shares of Series C Voting Preferred Stock (other than a change in par value, or from par value to no par value as a result of a subdivision or combination), or in case of any consolidation of the Corporation with one or more other corporations or a merger of the Corporation with another entity (other than a consolidation or merger in which the Corporation is the continuing corporation and which does not result in any reclassification or change of outstanding shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock), or in case of any sale, lease or other disposition to another entity (other than a wholly-owned subsidiary of the Corporation) of all, or substantially all of the assets of the Corporation, each holder of a share of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock shall have the right at any time thereafter, so long as the conversion right hereunder with respect to such share of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock would exist had such event not occurred, to convert such share into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition by a holder of the number of shares of Common Stock into which such shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock might have been converted immediately prior to such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition. In the event of such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition, effective provision shall be made in the certificate of incorporation of the resulting or surviving corporation or otherwise for the protection of the conversion right of the shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock that shall be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion of the shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock into which such shares of Series C Preferred Stock might have been converted immediately prior to such event. The Corporation shall not have the power to be a party to any merger, consolidation or recapitalization pursuant to which any holder of shares of Series C Preferred Stock would be required to take (x) any voting securities, the voting provisions or which would cause such holder to violate any law, regulation or other requirement of any governmental body applicable to such holder or (y) any securities convertible into voting securities, the voting provisions of which if such conversion took place would cause such holder to violate any law, regulation or other requirement of any governmental body applicable to such holder other than securities which are specifically provided to be convertible only in the event that such conversion may occur without any such violation.

(iii) Manner of Effecting Conversion. To convert Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock into Series C Non-Voting Preferred Stock or Series C Voting Preferred Stock, as the case may be, a holder must: (w) complete and sign a conversion notice on the back of the certificate representing Series C Preferred Stock or deliver written notice to the Corporation (or, if a conversion agent has been designated by the Corporation, to such agent (the "Series C Preferred Stock Conversion Agent")); (x) surrender the Series C Preferred Stock certificate to the Series C Preferred Stock Conversion Agent, in a written notice, or if no Series C Preferred Stock Conversion Agent is so designated, to the Corporation; (y) if the shares are being issued in a name other than that of the holder, furnish appropriate endorsements and transfer documents if required by the registrar for the Corporation's stock or the Series C Preferred Stock Conversion Agent; and (z) if the shares are being issued in a name other than that of the holder, pay any transfer tax or similar tax if required by Section 5(l)(iv). Except in the case of a conversion subject to the second paragraph of Section 5(l)(i) hereof, the date on which the holder of Series C Preferred Stock satisfies all of the foregoing requirements (w) through (y) is the conversion date. In the case of a conversion subject to the second paragraph of Section 5(l)(i) hereof, the conversion shall be deemed effective upon expiration of the Series C Preferred Stock Deferral Period referred to therein, and, at such time, the person(s) in whose name or names any certificate(s) evidencing

the converted shares are to be issued upon such conversion shall be deemed to have become the holder(s) of record of the converted shares. As soon as practicable, the Corporation shall deliver, itself or through the Series C Preferred Stock Conversion Agent, a certificate for the number of shares of Series C Preferred Stock issuable upon the conversion, calculated in accordance with Section 5(l)(i) or 5(l)(ii), as the case may be. The person or persons in whose name the certificate or certificates are registered shall be treated as a stockholder or stockholders of record on or after the conversion date. If less than all the shares represented by the Series C Preferred Stock certificate are being converted, a new stock certificate representing the unconverted shares shall be promptly issued by the Corporation to the holder thereof.

(iv) Transfer Taxes, Etc. If a holder converts shares of Series C Preferred Stock, the Corporation shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Series C Non-Voting Preferred Stock or Series C Voting Preferred Stock, as the case may be, upon such conversion. However, the holder shall pay any such tax which is due if and because the shares are issued in a name other than that of such holder.

(v) Issuance of Shares. The Corporation shall reserve out of its authorized but unissued Series C Preferred Stock and its Series C Preferred Stock held in treasury sufficient shares of Series C Preferred Stock to permit the conversions of all Series C Preferred Stock pursuant to Subsection 5(l)(i) or 5(l)(ii). All shares of Series C Preferred Stock issued upon such conversion shall be fully paid and non-assessable.

Shares of Series C Voting Preferred Stock and Series C Non-Voting Preferred Stock that are converted into shares of the other class shall not be reissued, except for reissuance in connection with the conversion of shares of Series C Voting Preferred Stock or Series C Non-Voting Preferred Stock held by Regulated Stockholders into shares of Series C Non-Voting Preferred Stock or Series C Voting Preferred Stock, respectively.

Section 6. Cancellation of Series C Preferred Stock. Except as provided in the last paragraph of Section 5(l), no share or shares of Series C Preferred Stock acquired by the Corporation by reason of redemption, conversion or otherwise shall be reissued, and all such shares (other than shares to the extent required for reissuance upon any conversion under Section 5(l)) shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

#### Section 7. Miscellaneous.

(a) Notices. Except as otherwise expressly provided hereunder, all notices shall be in writing and shall be delivered personally or by registered or certified mail, return receipt requested and postage prepaid, or by overnight courier services, charges prepaid, and shall be deemed to have been given when personally delivered, one (1) business day after the same is delivered to such an overnight courier service, charges prepaid, or three (3) business days after the same has been so deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed (i) to the Corporation, at its principal executive offices and (ii) to any holder of Series C Preferred Stock, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

(b) Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Series C Preferred Stock. Upon the surrender of any certificate representing Series C Preferred Stock at such place, the Corporation shall, at the request of the record holder of such certificate, 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 Series C Preferred Stock represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares of Series C Preferred Stock as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate.

(c) Replacement of Certificates. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series C 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 its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Series C Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate.

## 9. Additional Rights.

Section 1. Events of Noncompliance. The holders of the Series A Preferred Stock and the Series B Preferred Stock shall have the rights set forth herein upon the occurrence of an Event of Noncompliance:

(a) Events of Noncompliance Defined. The occurrence of any of the following events shall be an Event of Noncompliance under this Articles of Amendment: the Corporation or any of its subsidiaries shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code"); or an involuntary case is commenced against the Corporation or any of its subsidiaries and the petition is not controverted within 10 days, or is not dismissed within 60 days, after commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of the Corporation or any of its subsidiaries; or the Corporation or any of its subsidiaries commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Corporation or any of its subsidiaries; or there is commenced against the Corporation or any of its subsidiaries any such proceeding which remains undismissed for a period of 60 days; or the Corporation or any of its subsidiaries is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or the Corporation or any of its subsidiaries suffers any appointment of any custodian or the like for its or any substantial part of its property to continue undischarged or unstayed for a period of 60 days; or the Corporation or any of its subsidiaries makes a general assignment for the benefit of creditors; or any corporate action is taken by the Corporation or any of its subsidiaries for the purpose of effecting any of the foregoing.

Section 2. Consequences of Event of Noncompliance. (a) If an Event of Noncompliance has occurred, the holder or holders of at least 66-2/3% of the shares of the Series B Preferred Stock then outstanding may demand (by written notice delivered to the Corporation) immediate redemption of all of such shares of Series B Preferred Stock at a price per share equal to the Series B Liquidation Preference plus all accumulated and accrued but unpaid dividends thereon. The Corporation shall give prompt written notice of such election to the other holders of such shares of Series B Preferred Stock (but in any event within five days after receipt of the initial demand for redemption of the Series B Preferred Stock). The Corporation shall redeem the Series B Preferred Stock within 30 days after receipt of the demand for redemption.

(b) If an Event of Noncompliance has occurred, the holder or holders of the Series B Preferred Stock have demanded redemption pursuant to Section 2(a) hereof and have been paid the redemption price for the Series B Preferred Stock in full, then the holder or holders of a majority of the shares of the Series A Preferred Stock then outstanding may demand (by written notice delivered to the Corporation) immediate redemption of all of such shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Preference plus all accumulated and accrued but unpaid dividends thereon. The Corporation shall give prompt written notice of such election to the other holders of such shares of Series A Preferred Stock (but in any event within five days after receipt of the initial demand for redemption of the Series A Preferred Stock). The Corporation shall redeem the Series A Preferred Stock within 30 days after receipt of the demand for redemption.

Section 3. Suits for Enforcement. After any Event of Noncompliance specified in Section 1 above has occurred, any holder of Series A Preferred Stock or Series B Preferred Stock may proceed to protect and enforce such holder's rights either by suit in equity or by action at law, or both, whether for the specific performance of any covenant or agreement contained in the Purchase Agreement, the Corporation's Articles of Incorporation, or the Corporation's By-Laws, or in aid of the exercise of any power granted in the Purchase Agreement, the Corporation's Articles of Incorporation or the Corporation's By-Laws, or to enforce exercise of any power granted in the Purchase Agreement, the Corporation's Articles of Incorporation, or the Corporation's By-Laws, or to enforce any other legal or equitable right or remedy of such holder.

Section 4. Delays or Omissions. No failure to exercise or delay in the exercise of any right, power or remedy accruing to any holder of Series A Preferred Stock or Series B Preferred Stock upon any Event of Noncompliance hereunder or other breach or default of the Corporation under the Purchase Agreement, the Articles of Incorporation of the Corporation, or the Corporation's By-Laws, shall impair such right, power or remedy of such holder or shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

Section 5. Remedies Cumulative. All remedies, under either the Purchase Agreement, this Articles of Incorporation of the Corporation, or the Corporation's By-Laws, or by law or otherwise afforded to any holder of Series A Preferred Stock and Series B Preferred Stock shall be cumulative and not alternative.

## ARTICLE VI

### Board of Directors

1. The number of members of the Board of Directors may be increased or diminished from time to time by the Bylaws; provided, however, there shall never be less than one. Each director shall serve until the next annual meeting of shareholders.
2. If any vacancy occurs in the Board of Directors during a term, the remaining directors, by affirmative vote of a majority thereof, may elect a director to fill the vacancy until the next annual meeting of shareholders.
3. The names and mailing addresses of the current directors of the Corporation are as follows:

Tim Paterson-Brown	200 First Avenue West, Suite 505 Seattle, Washington 98119
Willy Paterson-Brown	200 First Avenue West, Suite 505 Seattle, Washington 98119
Vince Coviello	200 First Avenue West, Suite 505 Seattle, Washington 98119
Simon Zuanic	200 First Avenue West, Suite 505 Seattle, Washington 98119
Tom White	200 First Avenue West, Suite 505 Seattle, Washington 98119
Ken Chamberlin	200 First Avenue West, Suite 505 Seattle, Washington 98119
David Bogetz	200 First Avenue West, Suite 505 Seattle, Washington 98119

## **ARTICLE VII**

### **Amendment**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Amended and Restated Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders herein are granted subject to this reservation.

## **ARTICLE VIII**

### **Bylaws**

The power to adopt, amend or repeal bylaws for the management of this Corporation shall be vested in the Board of Directors or the shareholders, but the Board of Directors may not amend or repeal any bylaw adopted by the shareholders if the shareholders specifically provide that such bylaw is not subject to amendment or repeal by the Board of Directors.

## **ARTICLE IX**

### **Limitation of Director Liability and Directors, Officers, Employees and Agents Indemnification**

(a) **Liability.** A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 607.0831 of FBCA, or (iv) for any transaction from which the director derived an

improper personal benefit. If the FBCA is amended after the effective date of this article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the FBCA, as so amended.

(b) Indemnification. The Corporation shall indemnify, in the manner and to the full extent permitted by law, any person (or the estate of any person) who was or is a party to, or is threatened to be made a party to any threatened, pending or complete action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The Corporation may, to the full extent permitted by law, purchase and maintain insurance on behalf of any such person against any liability which may be asserted against him or her. To the full extent permitted by law, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, and, in the manner provided by law, any such expenses may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding. The indemnification provided herein shall not be deemed to limit the right of the Corporation to indemnify any other person for any such expenses to the full extent permitted by law, nor shall it be deemed exclusive of any other rights to which any person seeking indemnification from the Corporation may be entitled under any agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

## ARTICLE X

### Shareholder Actions By Consent

Any action that may be taken at a meeting of the Corporation's shareholders may be taken by written consent by the shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on the action were present and voted. If action is taken by less than unanimous consent, the Corporation shall give nonconsenting shareholders prior notice of such action. Such notice shall include the resolution approved by the shareholders by written consent and shall be hand delivered or sent first-class mail to each nonconsenting shareholder at the address on the books and records of the Corporation. Unless the written consent specifies a different effective date, the action is effective when consents sufficient to authorize the action have been delivered to the Corporation.

THIRD: The amendment does not provide for an exchange, reclassification, or cancellation of issued shares.

FOURTH: The foregoing Amended and Restated Articles of Incorporation were adopted by the Board of Directors of the Corporation on June 8, 1999 in accordance with the provisions of Section 607.0602(4) of the FBCA. These Amended and Restated Articles of Incorporation do not have any provisions which would require shareholder approval.

Dated: June 8, 1999

PURELY COTTON, INC.,  
a Florida corporation

By: 

Timothy Paterson-Brown, President and CEO