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**BASIC AMENDMENT**

**EDVERIFY, INC.**

Certificate of Status	0
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Estimated Charge	\$43.75

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**ARTICLES OF RESTATEMENT  
OF  
EDVERIFY, INC.**

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**ARTICLE 1 - NAME.**

The name of the Corporation is EdVerify, Inc. (the "*Corporation*").

**ARTICLE 2 - AMENDED AND RESTATED ARTICLES OF INCORPORATION.**

The text of the Corporation's Third Amended and Restated Articles of Incorporation is as set forth on *Exhibit A*, which is attached hereto and hereby incorporated by reference into this Article 2.

**ARTICLE 3. - ADOPTION OF AMENDED AND RESTATED ARTICLES OF INCORPORATION.**

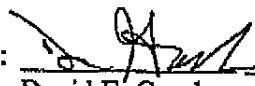
The Third Amended and Restated Articles of Incorporation of the Corporation were adopted on June 15, 2001 at a meeting of the Corporation's directors. The amendments contained in the Third Amended and Restated Articles of Incorporation of the Corporation required shareholder approval and the number of votes cast for the amendments by the shareholders was sufficient for approval.

**ARTICLE 4 - CERTIFICATE CERTIFYING SHAREHOLDER APPROVAL.**

The Third Amended and Restated Articles of Incorporation of the Corporation contain amendments that require shareholder approval. Pursuant to Section 607.1007(4)(b) of the Florida Business Corporation Act, the Secretary of the Corporation certifies in the Certificate attached to these Articles of Restatement that the Corporation's shareholders approved the Corporation's adoption of the Amended and Restated Articles of Incorporation.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be signed by its President this 15th day of June, 2001.

**EDVERIFY, INC.**

By:   
David E. Goodman  
President

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**CERTIFICATE**

Robert Gorman, as Secretary of EdVerify, Inc. (the "*Corporation*"), certifies that the number of shareholder votes cast for the amendments to the Corporation's Articles of Incorporation that are contained in the Corporation's Third Amended and Restated Articles of Incorporation were sufficient for approval of the amendments.

IN WITNESS WHEREOF, I have hereunto signed my name this 15th day of June, 2001.

  
\_\_\_\_\_  
Robert Gorman  
Secretary

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## EXHIBIT A

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**THIRD AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
EDVERIFY, INC.**

**FIRST:** The name of the Corporation is EdVerify, Inc. (the "*Corporation*")

**SECOND:** The nature of the business or purposes to be conducted or promoted by the Corporation is as follows:

This Corporation may engage or transact in any or all lawful activities or business permitted under the laws of the United States, the State of Florida or any other state, country, territory or nation.

**THIRD:** The mailing address and the address of the principal office of the Corporation is 880 Jupiter Park Drive, Suite 3, Jupiter, Florida 33458.

**FOURTH:** This Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares which the Corporation is authorized to issue is Twenty Two Million Four Hundred Five Thousand Two Hundred Thirty (22,405,230) shares, of which (i) Twelve Million Fifty Thousand (12,050,000) shares shall be Common Stock (the "*Common Stock*") and (ii) Ten Million Three Hundred Fifty Five Thousand Two Hundred Thirty (10,355,230) shares shall be Preferred Stock (the "*Preferred Stock*"). The Preferred Stock and Common Stock shall have a par value of one tenth of one cent (\$0.001).

Of the Corporation's authorized Preferred Stock (i) One Million Two Hundred Fifty Thousand (1,250,000) shares shall be designated as Series A Convertible Preferred Stock (the "*Series A Preferred*"), all of which shares are issued and outstanding as of the effective date hereof, (ii) Seven Hundred Fifty Two Thousand Nine Hundred Twenty (752,920) shares shall be designated as Series B Convertible Preferred Stock (the "*Series B Preferred*"), all of which shares are issued and outstanding as of the effective date hereof, (iii) One Million Forty Six Thousand Eight Hundred Twenty Three (1,046,823) shares shall be designated as Series C Convertible Preferred Stock (the "*Series C Preferred*"), all of which shares are issued and outstanding as of the effective date hereof, (iv) Two Million One Hundred Twenty Seven Thousand One Hundred Sixty (2,127,160) shares shall be designated as Series D-1 Convertible Preferred Stock (the "*Series D-1 Preferred*"), none of which shares are issued or outstanding as of the effective date hereof, (v) Two Million Six Hundred Seventy Eight Thousand Three Hundred Twenty Seven (2,678,327) shares shall be designated as Series D-2 Convertible Preferred Stock (the "*Series D-2 Preferred*"), none of which shares are issued or outstanding as of the effective date hereof, and (vi) Two Million Five Hundred Thousand (2,500,000) shares shall be undesignated, none of which shares are issued or outstanding (the "*Undesignated Preferred Stock*"). The Series D-1 Preferred and the Series D-2 Preferred shall be collectively

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referred to herein as the "**Senior Preferred Stock**." The Series A Preferred, Series B Preferred and Series C Preferred shall be collectively referred to herein as the "**Junior Preferred Stock**." The Senior Preferred Stock and the Junior Preferred Stock shall be referred to herein as the "**Designated Preferred Stock**."

The designations, preferences, powers, qualifications, and special or relative rights, or privileges of the Common Stock and the Preferred Stock shall be as set forth below.

#### 1. RELATIVE SENIORITY.

The Senior Preferred Stock shall rank senior to all other equity securities of the Corporation, including the Junior Preferred Stock and the Common Stock, with respect to dividend, liquidation, conversion and redemption rights. The Series A Preferred and the Series B Preferred shall rank *pari passu* to each other and senior only to the Series C Preferred and the Common Stock, with respect to dividend, liquidation and conversion rights. The Series C Preferred shall rank senior only to the Common Stock, with respect to dividend, liquidation and conversion rights.

#### 2. DIVIDEND RIGHTS.

(a) **Senior Preferred Stock.** The holders of Senior Preferred Stock, in preference to all holders of Junior Preferred Stock and Common Stock, shall be entitled to receive out of funds legally available for the purpose, cumulative dividends as provided in this Section 2. Dividends on each share of Senior Preferred Stock shall accrue at the rate of eight percent (8%) per annum on the sum of (i) with respect to the Series D-1 Preferred, \$1.1849 plus all accrued and unpaid dividends accrued thereon pursuant to this Section 2 from the date of issuance thereof, and (ii) with respect to the Series D-2 Preferred, \$0.9397 plus all accrued and unpaid dividends accrued thereon pursuant to this Section 2 from the date of issuance thereof (collectively, the "**Senior Preferred Dividends**"). The Senior Preferred Dividends shall commence to accrue on each share of Senior Preferred Stock from the date of issuance thereof and will be calculated and compounded annually on December 31 of each year (each a "**Dividend Date**") in respect of the prior twelve month period prorated on a daily basis for partial periods. The Senior Preferred Dividends shall be payable within ten (10) days of the Dividend Date as follows: (i) until June 15, 2004, the Senior Preferred Dividends will be paid (A) with respect to the Series D-1 Preferred, in additional shares of Series D-1 Preferred, and (B) with respect to the Series D-2 Preferred, in additional shares of Series D-2 Preferred, unless the holders of a majority of the Senior Preferred Stock consent to such payment in cash; and (ii) after June 15, 2004, the Senior Preferred Dividends will be paid, in the sole discretion of the Board of Directors, in either cash or (A) with respect to the Series D-1 Preferred, additional shares of Series D-1 Preferred, and (B) with respect to the Series D-2 Preferred, additional shares of Series D-2 Preferred. No dividends or other distributions shall be authorized, declared, paid or set apart for payment with respect to Junior Preferred Stock, Common Stock or any other equity securities of the Corporation unless the Senior Preferred Dividends are first declared and paid in full with respect to the Senior Preferred Stock.

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(b) **Junior Preferred Stock.** Subject to Section 2(a) above, the holders of Junior Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, if at all, dividends on a parity with each holder of shares of Common Stock. Such dividends shall be payable per each share of Junior Preferred Stock in an amount equal to the dividends per share payable on the number of shares of Common Stock into which such shares of Junior Preferred Stock is convertible on the record date for determining eligibility to receive such dividends, or if no such record date is established, on the date such dividends are actually paid.

(c) **Common Stock.** Subject to Section 2(a) above, when, as and if dividends with respect to the Common Stock are declared by the Board of Directors, whether payable in cash, in property, or in securities of the Corporation, the holders of Common Stock shall be entitled to share equally in and to receive such dividends in accordance with the number of shares of Common Stock held by each such holder.

### 3. VOTING RIGHTS.

(a) **Preferred Stock.** Except as otherwise provided herein or as required by law, each holder of shares of Designated Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which all shares of Designated Preferred Stock held by such holder are then convertible in accordance with Sections 6 and 7 below, at each meeting of shareholders of the Corporation (and written actions of shareholders in lieu of meetings) with respect to any and all matters presented to the shareholders of the Corporation for their action or consideration. Except as otherwise provided herein or as required by law, holders of Designated Preferred Stock shall vote together with the holders of Common Stock as a single class on all actions to be taken by the shareholders of the Corporation, including, but not limited to actions amending these Third Amended and Restated Articles of Incorporation to increase the number of authorized shares of Common Stock.

(b) **Common Stock.** Except as otherwise provided herein or as required by law, each holder of Common Stock shall be entitled to vote on all matters and shall be entitled to one vote for each share of Common Stock standing in such holder's name on the books of the Corporation.

(c) **Record Date.** The number of shares of Designated Preferred Stock or Common Stock, as the case may be, entitled to vote on any matter shall be determined in each case as of the record date for the determination of shareholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited.

(d) **Consent of Senior Preferred Stock.** Except where the vote or written consent of a greater number of shares of the capital stock of the Corporation is required by law or by these Third Amended and Restated Articles of Incorporation, and in addition to any other vote required by law or these Third Amended and Restated Articles of Incorporation, without the affirmative vote or written consent of the holders of at least fifty percent (50%) of the Senior Preferred Stock, the Corporation shall not:

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- (i) amend the articles of incorporation or bylaws of the Corporation;
- (ii) create or authorize any additional shares of capital stock, establish (including by reclassification of an existing class or series) any other class or classes of capital stock or establish any other securities exchangeable or convertible into a class of capital stock;
- (iii) issue additional shares of Preferred Stock or Common Stock or securities exchangeable or convertible into Preferred Stock or Common Stock, other than 522,625 shares of Common Stock currently reserved for issuance under the Corporation's 1999 Stock Option Plan and pursuant to convertible or exchangeable securities outstanding as of the effective date of these Third Amended and Restated Articles of Incorporation;
- (iv) effect any sale, liquidation, winding up, merger, consolidation or sale of all or substantially all of the assets of the Corporation or any other transaction in the case of any merger, consolidation or sale of assets in which control of the Corporation is transferred;
- (v) repurchase or redeem any capital stock of the Corporation (other than the Senior Preferred Stock);
- (vi) sell any subsidiary or shares held in any subsidiary;
- (vii) engage in any business that is substantially different from the business of the Corporation on the original date of issuance of the Senior Preferred Stock, including engaging in the "Information Management Solutions" business;
- (viii) increase or decrease the authorized maximum number of members constituting the Board of Directors to a number other than seven (7);
- (ix) authorize, pay, declare or set apart for payment any cash dividend on any shares of the Corporation's capital stock other than with respect to the Senior Preferred Stock;
- (x) borrow funds or guarantee indebtedness in any single transaction or series of transactions in an amount in excess of Seventy Five Thousand Dollars (\$75,000);
- (xi) enter into any contract or obligation that requires the Corporation to make annual payments in excess of Seventy Five Thousand Dollars (\$75,000), other than with respect to annual payments relating to an employee's salary, in which case such limit shall be One Hundred Thousand Dollars (\$100,000); or
- (xii) modify the Table of Delegation of Authorities attached as *Exhibit A* to the Term Sheet dated as of May 4, 2001 by and between the Corporation and Sylvan Ventures, L.L.C., a Delaware limited liability company.

#### 4. LIQUIDATION RIGHTS.

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Upon any liquidation, dissolution, or winding-up of the Corporation, either voluntary or involuntary, distributions to the shareholders of the Corporation shall be made in the following manner:

(a) **Senior Preferred Stock Liquidation Preference.** The holders of Senior Preferred Stock shall first receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Junior Preferred Stock and Common Stock or any other class or series of capital stock of the Corporation, an amount equal to (i) with respect to the Series D-1 Preferred, \$2.37 per share of Series D-1 Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series D-1 Preferred) then held by them, plus all accrued and unpaid dividends on the Series D-1 Preferred for each share of Series D-1 Preferred held by them as of the date payment is made pursuant to this Section 4(a), and (ii) with respect to the Series D-2 Preferred, \$1.88 per share of Series D-2 Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series D-2 Preferred) then held by them, plus all accrued and unpaid dividends on the Series D-2 Preferred for each share of Series D-2 Preferred held by them as of the date payment is made pursuant to this Section 4(a). If the assets of the Corporation legally available for distribution shall be insufficient to permit the payment in full to such holders of the Senior Preferred Stock of the full aforesaid preferential amounts, then the entire assets of the Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Preferred Stock in accordance with the aggregate liquidation preference (as set forth in this Section 4(a)) of the shares of the Senior Preferred Stock held by each of them.

(b) **Series A and B Preferred Liquidation Preference.** After payment has been made to the holders of the Senior Preferred Stock of the full amounts to which they shall be entitled as aforesaid pursuant to Section 4(a) above, the holders of Senior Preferred Stock and the holders of Series A Preferred and Series B Preferred shall be entitled to share ratably in the remaining assets of the Corporation legally available for distribution *pro rata* based on the number of shares of Common Stock held by them (assuming conversion of all such Senior Preferred Stock, Series A Preferred and Series B Preferred) until (i) the holders of Series D-1 Preferred have received assets with an aggregate fair market value of \$3.37 per share of Series D-1 Preferred (such sum to include all amounts received pursuant to Section 4(a) above and such target amount of \$3.37 to be adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series D-1 Preferred), (ii) the holders of Series D-2 Preferred have received assets with an aggregate fair market value of \$2.88 per share of Series D-2 Preferred (such sum to include all amounts received pursuant to Section 4(a) above and such target amount of \$2.88 to be adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series D-2 Preferred), (iii) the holders of Series A Preferred have received assets with an aggregate fair market value of \$1.00 per share of such Series A Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series A Preferred) together with an amount equal to all dividends declared and unpaid on each such share of Series A Preferred up to the date fixed for distribution and (iv) the holders of Series B Preferred have received assets with an aggregate fair market value of \$1.00 per share of



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such Series B Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series B Preferred) together with an amount equal to all dividends declared and unpaid on each such share of Series B Preferred up to the date fixed for distribution. If the assets of the Corporation legally available for distribution shall be insufficient to permit the payment in full to such holders of Senior Preferred Stock, Series A Preferred and Series B Preferred of the full aforesaid preferential amounts, then the entire assets of the Corporation legally available for distribution, subject to Section 4(a) above, shall be distributed ratably among the holders of the Senior Preferred Stock, Series A Preferred and Series B Preferred in accordance with the aggregate liquidation preference (as set forth in this Section 4(b)) of the shares of Senior Preferred Stock, Series A Preferred and Series B Preferred held by each of them.

(c) **Series C Preferred Liquidation Preference.** After payment has been made to the holders of Senior Preferred Stock, Series A Preferred and Series B Preferred of the full amounts to which they shall be entitled as aforesaid pursuant to Sections 4(a) and 4(b) above, the holders of Senior Preferred Stock and the holders of Series C Preferred shall be entitled to share ratably in the remaining assets of the Corporation legally available for distribution *pro rata* based on the number of shares of Common Stock held by them (assuming conversion of all such Senior Preferred Stock and Series C Preferred) until (i) the holders of Series D-1 Preferred have received assets with an aggregate fair market value of \$5.37 per share of Series D-1 Preferred (such sum to include all amounts received pursuant to Sections 4(a) and 4(b) above and such target amount of \$5.37 to be adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series D-1 Preferred), and (ii) the holders of Series D-2 Preferred have received assets with an aggregate fair market value of \$4.88 per share of Series D-2 Preferred (such sum to include all amounts received pursuant to Sections 4(a) and 4(b) above and such target amount of \$4.88 to be adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series D-2 Preferred), (iii) the holders of Series C Preferred have received assets with an aggregate fair market value of \$2.00 per share of Series C Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series C Preferred) together with an amount equal to all dividends declared and unpaid on each such share of Series C Preferred up to the date fixed for distribution. If the assets of the Corporation legally available for distribution shall be insufficient to permit the payment in full to such holders of Senior Preferred Stock and Series C Preferred of the full aforesaid preferential amounts, then the entire assets of the Corporation legally available for distribution, subject to Sections 4(a) and 4(b) above, shall be distributed ratably among the holders of the Senior Preferred Stock and Series C Preferred in accordance with the aggregate liquidation preference (as set forth in this Section 4(c)) of the shares of Senior Preferred Stock and Series C Preferred held by each of them.

(d) **Remaining Assets.** After payment has been made to the holders of Senior Preferred Stock and Junior Preferred Stock of the full amounts to which they shall be entitled as aforesaid pursuant to Sections 4(a), 4(b) and 4(c) above, the holders of Senior Preferred Stock and Common Stock shall be entitled to share ratably in the remaining assets of the Corporation

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legally available for distribution *pro rata* based on the number of shares of Common Stock held by them (assuming conversion of all such Senior Preferred Stock).

(c) **Definition of Liquidation.** With the exception of sales made pursuant to Section 7 of that certain Fourth Amended and Restated Shareholders' Agreement of even date hercof by and among the Corporation and the shareholders named therein, as such agreement may be amended from time to time (the "*Shareholders' Agreement*"), and subject to the provisions of Section 4(e)(iv) below, the following events shall be considered a liquidation, dissolution, or winding-up of the Corporation under this Section 4:

(i) any consolidation or merger of the Corporation into or with any other entity or entities (other than a consolidation or merger in which the shares of the Corporation outstanding immediately prior to the closing of such merger or consolidation (A) represent or are converted into shares of the surviving or resulting entity that represent more than fifty percent (50%) of the total number of shares of the surviving or resulting entity that are outstanding or are reserved for issuance immediately after the closing of the merger or consolidation and (B) have the power to elect more than fifty percent (50%) of the surviving or resulting corporation's directors;

(ii) the acquisition from the Corporation and/or from any shareholders of the Corporation in a single transaction or series of related transactions by any person or group of more than fifty percent of the Corporation's outstanding Common Stock (assuming the conversion of the outstanding shares of Designated Preferred Stock); or

(iii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation.

(iv) The Corporation shall not treat any of the events described in Sections 4(e)(i), 4(e)(ii) or 4(e)(iii) above as a liquidation, dissolution or winding-up of the Corporation (i) with respect to the Senior Preferred Stock, upon the vote or written consent of the holders of at least a majority of the Senior Preferred Stock, (ii) with respect to the Series A Preferred, upon the vote or written consent of the holders of at least a majority of the Series A Preferred, (iii) with respect to the Series B Preferred, upon the vote or written consent of the holders of at least a majority of the Series B Preferred, and (iv) with respect to the Series C Preferred, upon the vote or written consent of the holders of at least a majority of the Series C Preferred.

(f) **Consideration Received.** In any liquidation, dissolution, or winding-up of the Corporation, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

(i) Securities not subject to an investment letter or other similar restrictions on free marketability covered by Section 4(f)(ii) below:

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(A) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(ii) The method of valuation of securities subject to an investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 4(f)(i)(A), (B), or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

#### 5. REDEMPTION.

(a) **Redemption Election and Notice.** On or after June 15, 2006, the holders of sixty percent (60%) of the Senior Preferred Stock (the "**Senior Preferred Majority**") may, at any time, require the Corporation to redeem all (or less than all) of the outstanding Senior Preferred Stock. In any such case, the Senior Preferred Majority shall notify the Corporation in writing of its or their intent to exercise the rights afforded by this Section 5(a) and specify a date not less than thirty (30) nor more than one hundred twenty (120) days from the date of such notice on which the Senior Preferred Stock shall be redeemed by the Corporation (the "**Redemption Date**").

(b) **Redemption Price.** The total amount to be paid for the Senior Preferred Stock to be redeemed pursuant to Section 5(a) above shall be a per share price equal to (i) with respect to the Series D-1 Preferred, \$1.1849 (as adjusted for any stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of the Series D-1 Preferred) plus all accrued but unpaid dividends on such share as of the date of the redemption payment, and (ii) with respect to the Series D-2 Preferred, \$0.9397 (as adjusted for any stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of the Series D-2 Preferred) plus all accrued but unpaid dividends on such share as of the date of the redemption payment (collectively, the "**Redemption Price**").

(c) **Interest.** In the event shares of Senior Preferred Stock scheduled for redemption pursuant to Section 5(a) above are not redeemed because of a prohibition under applicable law, such shares shall be redeemed as soon as such prohibition no longer exists and the portion of the Redemption Price applicable to such shares will bear interest at the annual rate of eight percent (8%).

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(d) **Insufficient Funds for Redemption.** If the Corporation does not have sufficient funds legally available to redeem all shares requested to be redeemed on any given Redemption Date, then it shall redeem the Senior Preferred Stock *pro rata* (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(e) **Redemption Notice.** Not more than fifty (50) days and not less than ten (10) days prior to any Redemption Date, the Corporation shall mail written notice (a "*Redemption Notice*"), postage prepaid, to all holders of Senior Preferred Stock to be redeemed setting forth (i) the Redemption Date, (ii) the Redemption Price for the shares to be redeemed and (iii) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates.

(f) **Deposit of Redemption Price Funds.** On or prior to any Redemption Date, the Corporation shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of One Hundred Million Dollars (\$100,000,000), as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. The balance of any funds deposited by the Corporation pursuant to this Section 5(f) remaining unclaimed at the expiration of one (1) year following such Redemption Date shall be returned to the Corporation promptly upon its written request.

(g) **Surrender of Certificates.** On or after any Redemption Date, each holder of shares of Senior Preferred Stock requested to be redeemed shall surrender such holder's certificates representing such shares to the Corporation in the manner and at the place designated in the Redemption Notice, and thereupon the 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 canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Corporation is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as a holder of Senior Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Senior Preferred Stock are not redeemed due to a default in payment by the Corporation or because the Corporation does not have sufficient legally available funds, such shares of Senior Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(h) **Failure to Redeem.** In the event that the Corporation fails to redeem all of the Senior Preferred Stock within two (2) years of the Redemption Date, (i) the holders of Senior Preferred Stock shall have the right to elect the smallest number of additional directors that would provide them with a majority of the Board of Directors in accordance with the Shareholders' Agreement, (ii) the Series D-1 Conversion Price (as defined in Section 6(a)(i))

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below) then in effect shall decrease at the rate of twenty five percent (25%) per year thereafter, with the first such decrease taking effect on the second anniversary of the Redemption Date and (iii) the Series D-2 Conversion Price (as defined in Section 6(b)(i) below) then in effect shall decrease at the rate of twenty five percent (25%) per year thereafter, with the first such decrease taking effect on the second anniversary of the Redemption Date.

(i) **Additional Redemption.** The Corporation shall have no unilaterally exercisable right to repurchase or redeem any Junior Preferred Stock or Common Stock. The holders of Junior Preferred Stock shall have no unilaterally exercisable right to require the Corporation to repurchase or redeem any of their Junior Preferred Stock. No appraiser shall have the power to expand, modify or delete any of the procedures set forth herein.

## 6. CONVERSION.

The holders of Designated Preferred Stock shall have conversion rights as follows (the "*Conversion Rights*"):

### (a) Optional Conversion.

(i) **Series D-1 Preferred.** Each share of Series D-1 Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series D-1 Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series D-1 Preferred may be converted shall be determined by dividing \$1.1849 by the Series D-1 Conversion Price (as hereinafter defined) in effect at the time of conversion. As of the effective date of these Third Amended and Restated Articles of Incorporation, the "*Series D-1 Conversion Price*" shall initially be \$1.1849, which number is subject to subsequent adjustment as provided in Section 7 below.

(ii) **Series D-2 Preferred.** Each share of Series D-2 Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series D-2 Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series D-2 Preferred may be converted shall be determined by dividing \$0.9397 by the Series D-2 Conversion Price (as hereinafter defined) in effect at the time of conversion. As of the effective date of these Third Amended and Restated Articles of Incorporation, the "*Series D-2 Conversion Price*" shall initially be \$0.9397, which number is subject to subsequent adjustment as provided in Section 7 below.

(iii) **Series A Preferred.** Each share of Series A Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series A Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series A Preferred

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may be converted shall be determined by dividing \$1.00 by the Series A Conversion Price (as hereinafter defined) in effect at the time of conversion. As of the effective date of these Third Amended and Restated Articles of Incorporation, the "**Series A Conversion Price**" shall initially be \$1.7124 or, in the event that the Company issues and sells all of the shares of Series D-2 Preferred authorized for issuance hereunder, \$1.40, in either case subject to subsequent adjustment as provided in Section 7 below.

(iv) **Series B Preferred.** Each share of Series B Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series B Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series B Preferred may be converted shall be determined by dividing \$1.00 by the Series B Conversion Price (as hereinafter defined) in effect at the time of conversion. As of the effective date of these Third Amended and Restated Articles of Incorporation, the "**Series B Conversion Price**" shall initially be \$1.6939 or, in the event that the Company issues and sells all of the shares of Series D-2 Preferred authorized for issuance hereunder, \$1.39, in either case subject to subsequent adjustment as provided in Section 7 below.

(v) **Series C Preferred.** Each share of Series C Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series C Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series C Preferred may be converted shall be determined by dividing \$2.00 by the Series C Conversion Price (as hereinafter defined) in effect at the time of conversion. As of the effective date of these Third Amended and Restated Articles of Incorporation, the "**Series C Conversion Price**" shall initially be \$3.3362 or, in the event that the Company issues and sells all of the shares of Series D-2 Preferred authorized for issuance hereunder, \$2.48, in either case subject to subsequent adjustment as provided in Section 7 below.

(b) **Automatic Conversion.**

(i) **Series D-1 Preferred.** Each share of Series D-1 Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series D-1 Conversion Price for each such share immediately upon the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with a public offering price of not less than \$5.92 per share (as adjusted to reflect subsequent stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) and with aggregate gross proceeds to the Corporation of not less than Twenty Five Million Dollars (\$25,000,000) (a "**Qualified IPO**").

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(ii) **Series D-2 Preferred.** Each share of Series D-2 Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series D-2 Conversion Price for each such share immediately upon the closing of a Qualified IPO.

(iii) **Series A Preferred.** Each share of Series A and B Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series A Conversion Price for each such share immediately upon the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with a public offering price of not less than \$3.00 per share (as adjusted to reflect subsequent stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) and with aggregate gross proceeds to the Corporation of not less than Ten Million Dollars (\$10,000,000).

(iv) **Series B Preferred.** Each share of Series B Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series B Conversion Price for each such share immediately upon the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with a public offering price of not less than \$3.00 per share (as adjusted to reflect subsequent stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) and with aggregate gross proceeds to the Corporation of not less than Ten Million Dollars (\$10,000,000).

(v) **Series C Preferred.** Each share of Series C Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series C Conversion Price for each such share immediately upon the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with a public offering price of not less than \$3.00 per share (as adjusted to reflect subsequent stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) and with aggregate gross proceeds to the Corporation of not less than Ten Million Dollars (\$10,000,000).

(e) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Designated Preferred Stock, and any shares of Designated Preferred Stock surrendered for conversion that would otherwise result in a fractional share of Common Stock shall be redeemed for the then fair market value thereof as determined by the Board of Directors, payable as promptly as possible whenever funds are legally available therefore. If more than one share of Designated Preferred Stock is surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock to be issued upon conversion shall be computed on the basis of the aggregate number of shares of Designated Preferred Stock so surrendered.

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(d) **Mechanics of Conversion.** Before any holder of Designated Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for the Designated Preferred Stock and shall give written notice to the Corporation at such office that it elects to convert the same and shall state therein the name or names in which it wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Designated Preferred Stock, or to its nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which it shall be entitled as aforesaid, together with cash in lieu of any fraction of a share. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Designated 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 on such date.

(e) **Validly Issued.** All shares of Common Stock that may be issued upon conversion of the Designated Preferred Stock will upon issuance by the Corporation be validly issued, fully paid, nonassessable and free from all taxes, liens, and charges with respect to the issuance thereof.

(f) **Expenses.** The issuance of certificates representing shares of Common Stock upon conversion of any Designated Preferred Stock shall be made to each applicable shareholder without charge for any excise tax in respect of such issuance. However, if any certificate is to be issued in a name other than that of the holder of record of the Designated Preferred Stock, the person or persons requesting the issuance thereof shall pay to the Corporation the amount of any tax which may be payable in respect of any transfer involved in such issuance, or shall establish to the satisfaction of the Corporation that such tax has been paid or is not due and payable.

(g) **Status of Converted Stock.** If any Designated Preferred Stock shall be converted pursuant to this Section 6, the Designated Preferred Stock so converted shall resume the status of authorized but unissued and undesignated Preferred Stock.

(h) **Payment of Dividends.** If any Designated Preferred Stock shall be converted pursuant to this Section 6, to the extent it is legally able to do so, the Corporation shall pay to the holder of record of any Designated Preferred Stock being converted the following: (i) first, with respect to the holders Senior Preferred Stock, any accrued but unpaid dividends on any such Senior Preferred Stock surrendered for conversion, and (ii) second, with respect to the holders of Junior Preferred Stock, any declared but unpaid dividends on any such Junior Preferred Stock surrendered for conversion.

(i) **Common Stock Reserved.** The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of Designated Preferred Stock, the full number of shares of Common



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Stock deliverable upon the conversion of all Senior Preferred Stock from time to time outstanding.

**7. ADJUSTMENT OF CONVERSION PRICE.**

(a) **Adjustment of the Series D-1 Conversion Price.** The Series D-1 Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the date upon which the first share of Series D-1 Preferred was issued and outstanding (the "**Original Series D-1 Issuance Date**") subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series D-1 Preferred, the Series D-1 Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series D-1 Preferred, the Series D-1 Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) Except as otherwise provided in Section 7(a)(iii) below, if the Corporation shall at any time or from time to time on or after the Original Series D-1 Issuance Date issue or sell Equity Securities (as defined in Section 7(f)(i) below) for no consideration or at a consideration per share (the "**Lower Price**") less than the Series D-1 Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series D-1 Conversion Price of each share of Series D-1 Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series D-1 Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series D-1 Preferred Conversion Price,

and the denominator of which is

(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

provided that, (i) for the purpose of this Section 7(a)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or

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conversion rate of the Series D-1 Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) Notwithstanding the foregoing, if the Corporation shall at any time or from time to time on or after the Original Series D-1 Issuance Date issue or sell Equity Securities (as defined in Section 7(f)(i) below) at a Lower Price that is less than or equal to forty-five percent (45%) of the Series D-1 Conversion Price then in effect, the Series D-1 Conversion Price shall automatically become such Lower Price.

(iv) In the event the Corporation on or after the Original Series D-1 Issuance Date shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(a)(iv), the holders of Series D-1 Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series D-1 Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(v) If at any time or from time to time on or after the Original Series D-1 Issuance Date there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series D-1 Preferred shall thereafter be entitled to receive upon conversion of such Series D-1 Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series D-1 Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series D-1 Conversion Price then in effect and the number of shares purchasable upon conversion of such Series D-1 Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(b) **Adjustment of the Series D-2 Conversion Price.** The Series D-2 Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the date upon which the first share of Series D-2 Preferred was issued and outstanding (the "**Original Series D-2 Issuance Date**") subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series D-2 Preferred, the Series D-2 Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series D-2 Preferred, the Series D-2 Conversion Price in effect

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immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) Except as otherwise provided in Section 7(b)(iii) below, if the Corporation shall at any time or from time to time on or after the Original Series D-2 Issuance Date issue or sell Equity Securities (as defined in Section 7(f)(i) below) for no consideration or at a consideration per share (the "**Lower Price**") less than the Series D-2 Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series D-2 Conversion Price of each share of Series D-2 Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series D-2 Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series D-2 Preferred Conversion Price,

and the denominator of which is

(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

provided that, (i) for the purpose of this Section 7(b)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or conversion rate of the Series D-2 Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) Notwithstanding the foregoing, if the Corporation shall at any time or from time to time on or after the Original Series D-2 Issuance Date issue or sell Equity Securities (as defined in Section 7(f)(i) below) at a Lower Price that is less than or equal to forty-five percent (45%) of the Series D-2 Conversion Price then in effect, the Series D-2 Conversion Price shall automatically become such Lower Price.

(iv) In the event the Corporation on or after the Original Series D-2 Issuance Date shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(b)(iv), the holders of Series D-2 Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series D-2 Preferred are convertible

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as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(v) If at any time or from time to time on or after the Original Series D-2 Issuance Date there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series D-2 Preferred shall thereafter be entitled to receive upon conversion of such Series D-2 Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series D-2 Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series D-2 Conversion Price then in effect and the number of shares purchasable upon conversion of such Series D-2 Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(c) **Adjustment of the Series A Conversion Price.** The Series A Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the effective date of these Third Amended and Restated Articles of Incorporation subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series A Preferred, the Series A Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series A Preferred, the Series A Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) If the Corporation shall at any time or from time to time on or after the effective date of these Third Amended and Restated Articles of Incorporation issue or sell Equity Securities (as defined in Section 7(1)(i) below) for no consideration or at a consideration per share less than the Series A Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series A Conversion Price of each share of Series A Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series A Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series A Conversion Price,

and the denominator of which is

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(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

provided that, (i) for the purpose of this Section 7(c)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or conversion rate of the Series A Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) In the event the Corporation on or after the effective date of these Third Amended and Restated Articles of Incorporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(c)(iii), the holders of Series A Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(iv) If at any time or from time to time on or after the effective date of these Third Amended and Restated Articles of Incorporation there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon conversion of such Series A Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series A Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series A Conversion Price then in effect and the number of shares purchasable upon conversion of such Series A Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(d) **Adjustment of the Series B Conversion Price.** The Series B Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the effective date of these Third Amended and Restated Articles of Incorporation subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series B Preferred, the Series B Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend

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shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series B Preferred, the Series B Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) If the Corporation shall at any time or from time to time on or after the effective date of these Third Amended and Restated Articles of Incorporation issue or sell Equity Securities (as defined in Section 7(f)(i) below) for no consideration or at a consideration per share less than the Series B Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series B Conversion Price of each share of Series B Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series A Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series B Conversion Price,

and the denominator of which is

(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

provided that, (i) for the purpose of this Section 7(d)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or conversion rate of the Series B Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) In the event the Corporation on or after the effective date of these Third Amended and Restated Articles of Incorporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(d)(iii), the holders of Series B Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series B Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(iv) If at any time or from time to time on or after the effective date of these Third Amended and Restated Articles of Incorporation there shall be a recapitalization of

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the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series B Preferred shall thereafter be entitled to receive upon conversion of such Series B Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series B Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series B Conversion Price then in effect and the number of shares purchasable upon conversion of such Series B Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(e) **Adjustment of the Series C Conversion Price.** The Series C Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the effective date of these Third Amended and Restated Articles of Incorporation subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series C Preferred, the Series C Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series C Preferred, the Series C Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) If the Corporation shall at any time or from time to time on or after the effective date of these Third Amended and Restated Articles of Incorporation issue or sell Equity Securities (as defined in Section 7(1)(i) below) for no consideration or at a consideration per share less than the Series C Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series C Conversion Price of each share of Series C Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series C Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series C Conversion Price,

and the denominator of which is

(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

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provided that, (i) for the purpose of this Section 7(c)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or conversion rate of the Series C Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) In the event the Corporation on or after the effective date of these Third Amended and Restated Articles of Incorporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(c)(iii), the holders of Series C Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series C Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(iv) If at any time or from time to time on or after the effective date of these Third Amended and Restated Articles of Incorporation there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series C Preferred shall thereafter be entitled to receive upon conversion of such Series C Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series C Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series C Conversion Price then in effect and the number of shares purchasable upon conversion of such Series C Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(f) **Applicable Provisions.** For purposes of this Section 7(f), each of the Series D-1 Conversion Price, Series D-2 Conversion Price, Series A Conversion Price, Series B Conversion Price and Series C Conversion Price may be referred to herein as a "*Conversion Price*." In addition, for purposes hereof, the following provisions shall be applicable:

(i) The Term "*Equity Securities*" shall mean any shares of Common Stock, or any obligation or any share of stock or other security of the Corporation convertible into or exchangeable for Common Stock, except for (i) up to 1,184,444 shares of Common Stock issued or issuable to officers, directors, employees or consultants of the Corporation pursuant to a written stock option plan approved by the Corporation's Board of Directors and at an exercise price of no less than the fair market value of such Common Stock (collectively, a "*Stock Award*"), and any reissuance thereof upon any expiration, termination, surrender or forfeiture, approved by the Board of Directors (as appropriately adjusted to reflect stock splits, stock



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dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock), or such greater number as may be approved by a majority of the Board of Directors, which majority must include at least one (1) of the directors designated by the holders of Senior Preferred Stock pursuant to the Shareholders' Agreement; *provided, however*, that if any Stock Award issued on or before the effective date of these Third Amended and Restated Articles of Incorporation expires, or is terminated, surrendered or forfeited, in whole or in part, the Common Stock covered by such expired, terminated, surrendered or forfeited Stock Award may then be reissued and shall not be deemed to be Equity Securities in accordance with this Section 7(f)(i), *provided* that the aggregate number of shares so excluded does not exceed 1,184,444 shares; (ii) shares issued pursuant to transactions described in Sections 7(a)(i), 7(b)(i), 7(c)(i), 7(d)(i) and 7(e)(i) above; (iii) shares of Common Stock issued upon conversion of the Designated Preferred Stock; (iv) up to Two Hundred Seven Thousand Eight Hundred Sixteen (207,816) shares of Common Stock issuable upon the exercise of warrants outstanding as of the effective date of these Third Amended and Restated Articles of Incorporation (subject to adjustment as set forth in such warrants); (v) shares of Common Stock issued by the Corporation pursuant to a Qualified IPO.

(ii) In the case of an issue or sale for cash of shares of Common Stock, the "*consideration actually received*" by the Corporation therefore shall be deemed to be the amount of cash received, before deducting therefrom any commissions or expenses paid by the Corporation.

(iii) In case of the issuance of additional shares of Common Stock for a consideration other than cash or a consideration partly other than cash, the amount of the consideration other than cash received by the Corporation for such shares shall be deemed to be the value of such consideration as determined in good faith by the Board of Directors.

(iv) In case of the issuance by the Corporation in any manner of any rights to subscribe for or to purchase shares of Common Stock, or any options for the purchase of shares of Common Stock or stock convertible into Common Stock, all shares of Common Stock or stock convertible into Common Stock to which the holders of such rights or options shall be entitled to subscribe for or purchase pursuant to such rights or options shall be deemed "*outstanding*" immediately after the issuance or sale of such rights or the granting of such options, as the case may be, and the minimum aggregate consideration named in such rights or options for the shares of Common Stock or stock convertible into Common Stock covered thereby, plus the consideration, if any, received by the Corporation for such rights or options, shall be deemed to be the "*consideration actually received*" by the Corporation (as of the date of the offering of such rights or the granting of such options, as the case may be) for the issuance of such shares.

(v) In case of the issuance or issuances by the Corporation in any manner of any obligations or of any shares of stock of the Corporation that shall be convertible into or exchangeable for Common Stock, all shares of Common Stock issuable upon the conversion or exchange of such obligations or shares shall be deemed issued immediately after such obligations or shares are issued, and the amount of the "*consideration actually received*" by

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the Corporation for such additional shares of Common Stock shall be deemed to be that total of (x) the amount of consideration received by the Corporation upon the issuance of such obligations or shares, as the case may be, plus (y) the minimum aggregate consideration, if any, other than such obligations or shares, receivable by the Corporation upon such conversion or exchange.

(vi) The amount of the "*consideration actually received*" by the Corporation upon the issuance of any rights or options referred to in Section 7(f)(iv) above or upon the issuance of any obligations or shares which are convertible or exchangeable as described in Section 7(f)(v) above, and the amount of consideration, if any, other than such obligations or shares so convertible or exchangeable, received by the Corporation upon the exercise, conversion or exchange thereof shall be determined in the same manner provided in Sections 7(f)(ii) and (iii) above with respect to the consideration received by the Corporation in case of the issuance of additional shares of Common Stock; *provided, however*, that if such obligations or shares of stock so convertible or exchangeable are issued in payment or satisfaction of any dividend upon any stock of the Corporation other than Common Stock, the amount of the "*consideration actually received*" by the Corporation upon the original issuance of such obligations or shares or stock so convertible or exchangeable shall be deemed to be the value of such obligations or shares of stock, as of the date of the adoption of the resolution declaring such dividend, as determined by the Board of Directors at or as of that date. On the expiration of any rights or options referred to in Section 7(f)(iv) above, or the termination of any right of conversion or exchange referred to in Section 7(f)(v) above, or any change in the number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or exchange of such convertible or exchangeable securities, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price that would have been obtained had the adjustments made upon the issuance of such option, right or convertible or exchangeable securities been made upon the basis of the delivery of only the number of shares of Common Stock actually delivered or to be delivered upon the exercise of such rights or options or upon the conversion or exchange of such securities.

(g) **No Adjustment.** Notwithstanding the foregoing, there shall be no adjustment to the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series D-1 Conversion Price or the Series D-2 Conversion Price upon the issuance of any shares of Series D-1 Preferred, Series D-2 Preferred or Series C Preferred.

(h) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment to a Conversion Price pursuant to this Section 7, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof, and shall prepare and furnish to each holder of Designated Preferred Stock affected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Designated Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustment or readjustment, (ii) the Conversion Price applicable to such holder of Designated Preferred Stock at the time in effect and (iii) the

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number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Designated Preferred Stock.

(i) **Other Actions.** The Corporation will not, by amendment of these Third Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of Section 6 above and this Section 7.

(j) **Notice.** All notices, consents, elections, requests, waivers and other communications required or allowed pursuant to this Article Fourth shall be in writing and shall be deemed to have been duly given or made the second business day after the date of mailing, if delivered by registered or certified mail, postage prepaid; upon delivery, if sent by hand delivery; upon delivery, if sent by prepaid courier, with a record of receipt; or the next day after the date of dispatch, if sent by cable, telegram, facsimile or telecopy (with a copy simultaneously sent by registered or certified mail, postage prepaid, return receipt requested). Each such communication shall be transmitted, if to the Corporation, at its principal business address, and if to a holder of Designated Preferred Stock and/or Common Stock, at the address set forth in the shareholder records as maintained by the Corporation, or to such other address as any such shareholder may have designated by like notice forwarded to the Corporation. Notice of any change in any such address shall also be given in the manner set forth above. Whenever the giving of notice is required, the giving of such notice may be waived by the party entitled to receive such notice.

#### **8. UNDESIGNATED PREFERRED STOCK.**

(a) Subject to the provisions set forth elsewhere in this Article Fourth, including Sections 3(d) and 8(b), Undesignated Preferred Stock may be issued from time to time in one or more series as may be determined by the Board of Directors. Subject to the provisions of these Third Amended and Restated Articles of Incorporation and this Article Fourth, the Board of Directors is authorized to determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued series of Undesignated Preferred Stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any such additional series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such additional series subsequent to the issue of shares of that series.

Subject to the provisions set forth elsewhere in this Article Fourth, including Sections 3(d) and 8(b), authorized and unissued Undesignated Preferred Stock may be issued with such designations, voting powers, preferences or other special rights, and qualifications, limitations and restrictions on such rights, as the Board of Directors may authorize by resolutions duly adopted prior to the issuance of any shares of any series of Undesignated Preferred Stock, including, but not limited to: (i) the distinctive designation of each series and the number of shares that will constitute such series; (ii) the voting rights, if any, of shares of such series and whether the shares of any such series having voting rights shall have multiple votes per share;

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(iii) the dividend rate on the shares of such series, any restriction, limitation, or condition upon the payment of such dividends, whether dividends shall be cumulative, and the dates on which dividends are payable; (iv) the prices at which, and the terms and conditions on which the shares of such series may be redeemed, if such shares are redeemable; (v) the purchase or sinking fund provisions, if any, for the purchase or redemption of shares of such series; (vi) any preferential amount payable upon shares of such series in the event of the liquidation, dissolution, or winding-up of the Corporation, or the distribution of its assets; and (vii) the prices or rates of conversion at which, the terms and conditions on which, the shares are convertible.

(b) Except for the approval of the holders of the Senior Preferred Stock required pursuant to Section 3(d) of this Article Fourth, no consent or approval of the holders of any Junior Preferred Stock or Common Stock shall be required for the authorization and issuance of the Undesignated Preferred Stock.

**FIFTH:** In furtherance of and not in limitation of powers conferred by statute, it is further provided that the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

**SIXTH:** The address of the registered office of the Corporation is c/o Edwards & Angell, LLP, One North Clematis, Suite 400, West Palm Beach, Florida 33401, and the name of the registered agent of the corporation at that address is Angell Corporate Services, Inc.

**SEVENTH:** As permitted by Section 607.0702(1)(b) of the Florida Business Corporation Act, the shareholders may call a special meeting of shareholders only if the holders of not less than fifty percent (50%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the Corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

**EIGHTH:** The Corporation shall, to the fullest extent permitted by Section 607.0850 of the Florida Business Corporation Act, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was, or has agreed to become, a director, officer, employee or agent of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, employee, agent, partner or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "*Indemnitee*"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of an Indemnitee in connection with such action, suit or proceeding and any appeal therefrom.

As a condition precedent to his right to be indemnified, the Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving him for which indemnity will or could be sought. With respect to any action, suit,

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proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to the Indemnitee.

In the event that the Corporation does not assume the defense of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article Eighth, the Corporation shall pay in advance of the final disposition of such matter any expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal action, suit, proceeding or investigation or any appeal therefrom; *provided, however*, that the payment of such expenses incurred by an Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of the Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that the Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article Eighth, which undertaking shall be accepted without reference to the financial ability of the Indemnitee to make such repayment; *provided, further*, that no such advancement of expenses shall be made if it is determined that (i) the Indemnitee did not act in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe his conduct was unlawful.

The Corporation shall not indemnify an Indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors. In addition, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund such indemnification payments to the Corporation to the extent of such insurance reimbursement.

All determinations hereunder as to the entitlement of an Indemnitee to indemnification or advancement of expenses shall be made in each instance by (a) a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("*disinterested directors*"), whether or not a quorum, (b) a majority vote of a quorum of the outstanding shares of stock of all classes entitled to vote for directors, voting as a single class, which quorum shall consist of shareholders who are not at that time parties to the action, suit or proceeding in question, (c) independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation), or (d) a court of competent jurisdiction.

The Corporation may purchase and maintain insurance on behalf of any Indemnitee against any liability asserted against such Indemnitee and incurred by such Indemnitee in any such capacity, or arising out of such Indemnitee's status as such, whether or not the Corporation would have power to indemnify such Indemnitee against such liability under this Article Eighth.

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The indemnification rights provided in this Article Eighth (i) shall not be deemed exclusive of any other rights to which an Indemnitee may be entitled under any law, agreement or vote of shareholders or disinterested directors or otherwise, (ii) shall continue as to an Indemnitee who no longer holds the position in which he was entitled to indemnification under this Article Eighth and (iii) shall inure to the benefit of the heirs, executors and administrators of the Indemnitees. If any provision in this Article Eighth shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and, to the extent possible, effect shall be given to the intent manifested by the provision held invalid, illegal, or unenforceable.

**NINTH:** Except to the extent that the Business Corporation Act of the State of Florida prohibits the elimination or limitation of liability of directors for breach of the duties of a director, no director of the Corporation shall have any personal liability for monetary damages for any statement, vote, decision, or failure to act, regarding corporate management or policy. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

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