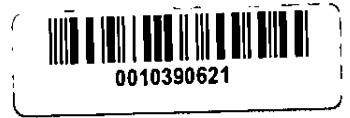


File Number 5525-104-5



64-18

Property of Cook County Clerk's Office

# State of Illinois Office of The Secretary of State

Whereas, ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION OF IFC CREDIT CORPORATION INCORPORATED UNDER THE LAWS OF THE STATE OF ILLINOIS HAVE BEEN FILED IN THE OFFICE OF THE SECRETARY OF STATE AS PROVIDED BY THE BUSINESS CORPORATION ACT OF ILLINOIS, IN FORCE JULY 1, A.D. 1984.

Now Therefore, I, Jesse White, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate and attach hereto a copy of the Application of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, at the City of Springfield, this 21ST day of MARCH A.D. 2001 and of the Independence of the United States the two hundred and 25TH



BOB 178 Jesse White  
Secretary of State

Form **BCA-10.30**

**ARTICLES OF AMENDMENT**

File # 5525-104-5

(Rev. Jan. 1999)

Jesse White  
Secretary of State  
Department of Business Services  
Springfield, IL 62756  
Telephone (217) 782-1832

Remit payment in check or money order, payable to "Secretary of State."

The filing fee for restated articles of amendment - \$100.00

http://www.sos.state.il.us

**FILED**

MAR 21 2001

JESSE WHITE  
SECRETARY OF STATE

**SUBMIT IN DUPLICATE**

This space for use by Secretary of State

Date 3-21-01

Franchise Tax \$  
Filing Fee\* \$25.00  
Penalty \$

Approved: *[Signature]*

1. CORPORATE NAME: IFC CREDIT CORPORATION (Note 1)

2. MANNER OF ADOPTION OF AMENDMENT:

The following amendment of the Articles of Incorporation was adopted on March 13 (Month & Day)

2001 in the manner indicated below. ("X" one box only)  
(Year)

- By a majority of the incorporators, provided no directors were named in the articles of incorporation and no directors have been elected; (Note 2)
- By a majority of the board of directors, in accordance with Section 10.10, the corporation having issued no shares as of the time of adoption of this amendment; (Note 2)
- By a majority of the board of directors, in accordance with Section 10.15, shares having been issued but shareholder action not being required for the adoption of the amendment; (Note 3)
- By the shareholders, in accordance with Section 10.20, a resolution of the board of directors having been duly adopted and submitted to the shareholders. At a meeting of shareholders, not less than the minimum number of votes required by statute and by the articles of incorporation were voted in favor of the amendment; (Note 4)
- By the shareholders, in accordance with Sections 10.20 and 7.10, a resolution of the board of directors having been duly adopted and submitted to the shareholders. A consent in writing has been signed by shareholders having not less than the minimum number of votes required by statute and by the articles of incorporation. Shareholders who have not consented in writing have been given notice in accordance with Section 7.10; (Notes 4 & 5)
- By the shareholders, in accordance with Sections 10.20 and 7.10, a resolution of the board of directors having been duly adopted and submitted to the shareholders. A consent in writing has been signed by all the shareholders entitled to vote on this amendment. (Note 5)

3. TEXT OF AMENDMENT:

a. When amendment effects a name change, insert the new corporate name below. Use Page 2 for all other amendments.

Article I: The name of the corporation is:

--NO CHANGE--

(NEW NAME)

All changes other than name, include on page 2 (over)

**BOX 170**

**UNOFFICIAL COPY** 10390621  
Text of Amendment

- b. *(If amendment affects the corporate purpose, the amended purpose is required to be set forth in its entirety. If there is not sufficient space to do so, add one or more sheets of this size.)*

--REFER TO EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.----

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BOX 170

# UNOFFICIAL COPY

4. The manner, if not set forth in Article 3b, in which any exchange, reclassification or cancellation of issued shares, or a reduction of the number of authorized shares of any class below the number of issued shares of that class, provided for or effected by this amendment, is as follows: *(If not applicable, insert "No change")*

--REFER TO EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.----

5. (a) The manner, if not set forth in Article 3b, in which said amendment effects a change in the amount of paid-in capital (Paid-in capital replaces the terms Stated Capital and Paid-in Surplus and is equal to the total of these accounts) is as follows: *(If not applicable, insert "No change")*

--NO CHANGE---

(b) The amount of paid-in capital (Paid-in Capital replaces the terms Stated Capital and Paid-in Surplus and is equal to the total of these accounts) as changed by this amendment is as follows: *(If not applicable, insert "No change")*

--NO CHANGE---

	Before Amendment	After Amendment
Paid-in Capital	\$ _____	\$ _____

(Complete either Item 6 or 7 below. All signatures must be in **BLACK INK.**)

6. The undersigned corporation has caused this statement to be signed by its duly authorized officers, each of whom affirms, under penalties of perjury, that the facts stated herein are true.

Dated March 16, 2001  
 (Month & Day) (Year)

attested by [Signature]  
 (Signature of Secretary or Assistant Secretary)  
Rudolph D. Trebels, Secretary  
 (Type or Print Name and Title)

IFC CREDIT CORPORATION  
 (Exact Name of Corporation at date of execution)

by [Signature]  
 (Signature of President or Vice President)  
Rudolph D. Trebels, President  
 (Type or Print Name and Title)

7. If amendment is authorized pursuant to Section 10.10 by the incorporators, the incorporators must sign below, and type or print name and title.

OR

If amendment is authorized by the directors pursuant to Section 10.10 and there are no officers, then a majority of the directors or such directors as may be designated by the board, must sign below, and type or print name and title.

The undersigned affirms, under the penalties of perjury, that the facts stated herein are true.

Dated \_\_\_\_\_, \_\_\_\_\_  
 (Month & Day) (Year)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**BOX 170**

# UNOFFICIAL COPY

## NOTES and INSTRUCTIONS

- NOTE 1: State the true exact corporate name as it appears on the records of the office of the Secretary of State, BEFORE any amendments herein reported.
- NOTE 2: Incorporators are permitted to adopt amendments ONLY before any shares have been issued and before any directors have been named or elected. (§ 10.10)
- NOTE 3: Directors may adopt amendments without shareholder approval in only seven instances, as follows:
- (a) to remove the names and addresses of directors named in the articles of incorporation;
  - (b) to remove the name and address of the initial registered agent and registered office, provided a statement pursuant to § 5.10 is also filed;
  - (c) to increase, decrease, create or eliminate the par value of the shares of any class, so long as no class or series of shares is adversely affected.
  - (d) to split the issued whole shares and unissued authorized shares by multiplying them by a whole number, so long as no class or series is adversely affected thereby;
  - (e) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name, or by adding a geographical attribution to the name;
  - (f) to reduce the authorized shares of any class pursuant to a cancellation statement filed in accordance with § 9.05,
  - (g) to restate the articles of incorporation as currently amended. (§ 10.15)
- NOTE 4: All amendments not adopted under § 10.10 or § 10.15 require (1) that the board of directors adopt a resolution setting forth the proposed amendment and (2) that the shareholders approve the amendment.
- Shareholder approval may be (1) by vote at a shareholders' meeting (*either annual or special*) or (2) by consent, in writing, without a meeting.
- To be adopted, the amendment must receive the affirmative vote or consent of the holders of at least 2/3 of the outstanding shares entitled to vote on the amendment (*but if class voting applies, then also at least a 2/3 vote within each class is required*).
- The articles of incorporation may supersede the 2/3 vote requirement by specifying any smaller or larger vote requirement not less than a majority of the outstanding shares entitled to vote and not less than a majority within each class when class voting applies. (§ 10.20)
- NOTE 5: When shareholder approval is by consent, all shareholders must be given notice of the proposed amendment at least 5 days before the consent is signed. If the amendment is adopted, shareholders who have not signed the consent must be promptly notified of the passage of the amendment. (§§ 7.10 & 10.20)

# UNOFFICIAL COPY

## EXHIBIT A TO ARTICLES OF AMENDMENT OF IFC CREDIT CORPORATION

**ARTICLE 4: CAPITAL STOCK.** The classes of stock which the Corporation is authorized to issue, and the designations, preferences, qualifications, limitations, restrictions, and special or relative rights with respect to the shares of each class, are as follows:

A. Authorized Stock. The Corporation is authorized to issue two classes of stock designated, respectively, "Common Stock" and "Preferred Stock". The Corporation is authorized to issue a total of 39,000,000 shares of all classes, consisting of 35,000,000 shares of Common Stock, par value \$0.01 per share, and 4,000,000 Preferred Shares, par value \$0.01 per share.

B. Common Stock.

Section 1. General.

The voting, dividend and liquidation and other rights of the holders of Common Stock are subject to and qualified by the rights of the holders of Preferred Stock, if any.

Section 2. Voting.

The holders of the Common Stock are entitled to one vote for each share held. There shall be no cumulative voting.

Section 3. Dividends.

Dividends may be declared and paid on the Common Stock from funds lawfully available therefore if, as and when determined by the Board of Directors in their sole discretion, subject to provisions of law, any provision of this Amended Articles of Incorporation, as amended from time to time, and subject to the relative rights and preferences of any shares of Preferred Stock authorized and issued hereunder.

Section 4. Liquidation.

Upon the dissolution or liquidation or winding up of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive pro rata all assets of the Corporation available for distribution to its stockholders, subject, however, to the liquidation rights of the holders of Preferred Stock authorized and issued hereunder.

C. Preferred Stock.

Section 1. Designation and Amount.

The shares of such series shall be designated as "Series A 12.0% Cumulative Convertible Preferred Stock" (the "Series A Preferred"), and the number of shares constituting such series shall be 1,200,000.

Defined terms used in this Certificate of Designation and not defined herein shall have the respective meanings given thereto in Section 10.

Section 2. Dividends.

A. Payment. The holders of the shares of Series A Preferred (collectively "Shares" and individually a "Share") shall be entitled to receive, when declared payable by the Board of Directors from funds legally available therefore, and subject to the limitations set forth in that certain Subordinated Note Agreement, dated as of October 1, 1998, between the Company and Structured Equity LLC (the "Subordinated Note Agreement"), dividends at the rate of twelve percent (12.0%) per annum of the Liquidation Value thereof (calculated on the basis of a year of 360 days consisting of twelve 30-day months) from and including February 28, 2001 to and including the Redemption Date, subject to the provisions of Section 6, or the Conversion Date, as the case may be, or the earlier liquidation, dissolution or winding up of the Corporation. Such dividends will be payable on July 31, 2001 and on each October 31, January 31, April 30 and July 31 of each year thereafter (each, a "Payment Date") to holders of record on the Record Date in advance of such Payment Date. A quarterly dividend period shall begin on the day following each Record Date and end on the next succeeding Record Date. If dividends shall not have been paid, or declared and set apart for payment, upon all outstanding shares of Series A Preferred at the aforesaid rate, such deficiency shall be cumulative in full (and thereby accumulate).

B. Unpaid Dividends. If the Company fails to pay a dividend within three (3) days of any Payment Date ("Unpaid Dividends"), then any such Unpaid Dividends shall accrue and thereafter be payable at a rate per annum equal to fifteen percent (15%) per annum for the first thirty (30) days after the Payment Date and, if such Unpaid Dividends have not been paid within such thirty (30) day period, then eighteen percent (18%) per annum for each month thereafter until all such Unpaid Dividends have been paid in full.

C. Interest Rate. Accumulation of dividends on the Series A Preferred shall bear interest at the rate equal to the then applicable dividend rate, compounded annually until paid.

Section 3. Liquidation.

Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), each holder of Series A Preferred shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities, an amount in cash equal to the aggregate Liquidation Value of all Shares held by such holder plus the accrued dividends thereon, and the holders of Series A Preferred shall not be entitled to any further payment. If upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of the Series A Preferred are insufficient to permit payment



to such holders of the aggregate amount which they are entitled to be paid under the first sentence of this Section 3, then the entire assets available to be distributed to the Corporation's stockholders shall be distributed pro rata among such holders based upon the aggregate Liquidation Value (plus the aggregate accrued dividends thereon) of the Series A Preferred held by each such holder. Prior to the liquidation, dissolution or winding up of the Corporation, the Corporation shall declare for payment all accrued and unpaid dividends with respect to the Series A Preferred, but only to the extent (i) of funds of the Corporation legally available for the payment of dividends and (ii) permitted pursuant to the Subordinated Note Agreement. Not less than 60 days prior to the payment date stated therein, the Corporation shall mail written notice of any such liquidation, dissolution or winding up to each record holder of Series A Preferred, setting forth in reasonable detail the amount of proceeds to be paid with respect to each Share, each share of Common Stock and each share of any other class or series of outstanding equity securities in connection with such liquidation, dissolution or winding up. Neither the consolidation or merger of the Corporation into or with any other entity or entities (whether or not the Corporation is the surviving entity), nor the sale or transfer by the Corporation of all or any part of its assets, nor the reduction of the capital stock of the Corporation, nor any other form of recapitalization or reorganization affecting the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 3.

The holder of any Series A Preferred shall not be entitled to receive any payment owed for such Shares under this Section 3 until such holder shall cause to be delivered to the Corporation (i) the certificate(s) representing such Series A Preferred and (ii) transfer instrument(s) satisfactory to the Corporation and sufficient to transfer such Shares to the Corporation free of any adverse interest. No interest shall accrue on any payment under this Section 3 after the due date thereof.

After payment of the full amount of the liquidating distribution to which they are entitled, the holders of the Series A Preferred will not be entitled to any further participation in any distribution of assets by the Corporation.

Section 4. Priority of Series A Preferred.

The Series A Preferred shall be prior and senior to the Common Stock and to all other classes of stock of the Corporation designated as junior to the Series A Preferred as to dividends and as to distribution upon liquidation, dissolution or winding up of the Corporation (together, "Junior Securities").

So long as any Series A Preferred remains outstanding, without the prior written consent of the holders of a majority of the Outstanding Shares of Series A Preferred, the Corporation shall not, nor shall it permit any Subsidiary to, redeem, purchase or otherwise acquire directly or indirectly any Junior Securities except the Corporation is expressly permitted, without such prior written consent, to purchase certain warrants (the "Warrants") issued pursuant to that certain Equity Agreement between the Corporation and Structured Equity LLC, dated as of October 1, 1998 or any shares issued in connection with the exercise of such Warrants, all pursuant to the Equity Agreement, nor shall the Corporation directly or indirectly pay or declare any dividend (other than a dividend payable solely in shares of the Junior Securities) or make any distribution



upon any Junior Securities unless full cumulative dividends have been declared and set aside for payment in full on the Series A Preferred.

The Series A Preferred shall be pari passu to all other class of stock of the Corporation designated as pari passu to the Series A Preferred as to dividends and as to distributions upon liquidating dissolution or winding up on the Corporation (together, "Parity Securities").

So long as any Series A Preferred remains outstanding, without the prior written consent of the holders of a majority of the Outstanding Shares of Series A Preferred, the Corporation shall not, nor shall it permit any Subsidiary to, redeem, purchase or otherwise acquire directly or indirectly any Parity Securities ("Buyback"), nor shall the Corporation directly or indirectly pay or declare any dividend (other than a dividend payable solely in shares of Parity Securities or Junior Securities) or make any distribution upon any Parity Securities ("Distribution") unless either (i) full cumulative dividends have been declared and set aside for payment in full on the Series A Preferred or (ii) such Buybacks or Distributions are also made on a pro rata basis on the Series A Preferred.

Section 5. Conversion. Conversion rights shall apply to the Series A Preferred as follows (the "Conversion Rights").

A. General. For the purposes of conversion, the Series A Preferred shall be valued at the Issue Price, and, if converted, the Series A Preferred shall be converted into Common Stock (the "Conversion Stock") at the price of \$2.50 per share of Conversion Stock ("Conversion Price"), subject to adjustment pursuant to the provisions of this Section 5.

B. Holder's Right to Convert. Each Holder of Series A Preferred shall have the right to convert any or all of such Holder's outstanding Series A Preferred into Conversion Stock at any time upon sixty (60) days advanced written notice to the Company. For purposes hereof, any Holder that acquires shares of Series A Preferred from another Holder and not upon original issuance from the Corporation shall be entitled to exercise its conversion right in the same manner as the original Holder. Each Holder's right to convert shall operate as follows:

(i) Mechanics of Conversion. In order to convert Series A Preferred into full shares of Common Stock, a Holder shall (A) send to the Corporation a fully executed notice of conversion ("Notice of Conversion") which shall specify the date on which the Notice of Conversion is deposited in the mail (the "Date of Conversion"), the number of shares of Series A Preferred to be converted, the applicable Conversion Price and a calculation of the number of shares of Conversion Stock issuable upon such conversion and (B) together with the Notice of Conversion, send the original certificates representing the Series A Preferred being converted (the "Stock Certificates"), duly endorsed for transfer.

(ii) Delivery of Common Stock Upon Conversion. The Corporation shall no later than 30 days after receipt by the Corporation of all necessary documentation duly executed and in proper form required for conversion, send to the Holder (A) a certificate for the number of shares of Conversion Stock to which the Holder shall be entitled as aforesaid and (B) a certificate for the number of shares of Series A Preferred that were not so converted. In the case of a dispute as to the calculation of the Conversion Price, the Corporation shall promptly

issue to the Holder the number of Shares that are not disputed and shall submit the disputed calculations to its outside accountant. The Corporation shall cause the accountant to perform the calculations and notify the Corporation and Holder of the results no later than 60 business days from the time it receives the disputed calculations. The accountant's calculation shall be deemed conclusive absent manifest error.

C. Mandatory Conversion. (i) Upon the first to occur of the consummation of an Initial Public Offering (as defined below) and February 28, 2006, all of the shares of Series A Preferred then outstanding shall be converted without any further action on the part of the Corporation or the Holders of such Series A Preferred into Conversion Stock ("Mandatory Conversion"). Notice thereof shall be mailed within five days following the first sale of Common Stock pursuant to the Initial Public Offering by the Corporation to each Holder of Series A Preferred or February 28, 2006, as the case may be, such notice to specify the date on which Mandatory Conversion occurred (which may be retrospective to as early as the 30th day prior to the Initial Public Offering) and to call upon such Holder to surrender to the Corporation, in the manner and at the place designated in such notice, the Stock Certificates. The number of shares of Common Stock to be delivered to each Holder of Series A Preferred upon Mandatory Conversion shall be computed by dividing (A) the Issue Price by (B) the Conversion Price in effect at the time of Mandatory Conversion. In the event of Mandatory Conversion, the Corporation shall forthwith transmit to each Holder of Series A Preferred certificates for the shares of Common Stock issued as a result thereof, dated the date of Mandatory Conversion; and such Holders shall be deemed for all purposes to be the Holders of such Common Stock as of the date of Mandatory Conversion.

(ii) An "Initial Public Offering" is the first sale of Common Stock by the Corporation to underwriters for the account of the Corporation pursuant to a registration statement under the Securities Act filed with the SEC where: the pre-public offering market capitalization of the Corporation is at least \$50,000,000 and the total aggregate offering price to the public of the Common Stock so sold by the Corporation is at least \$10,000,000.

D. Adjustment Due to Stock Split, Stock Dividend, Etc. If, prior to the conversion of all of the Series A Preferred, the number of outstanding shares of Common Stock is increased by a stock split, stock dividend or other similar event, the Conversion Price shall be proportionately reduced, or if the number of outstanding shares of Common Stock is decreased by a combination or reclassification of shares, or other similar event, the Conversion Price shall be proportionately increased.

E. Adjustment Due to Merger, Consolidation, Etc. If, prior to the conversion of all Series A Preferred, there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event, as a result of which shares of Common Stock shall be changed into the same or a different number of shares of the same or another class or classes of stock or securities of the Corporation or another entity or there is a sale of all or substantially all the Corporation's assets or there is a change of control transaction, then the Holders of Series A Preferred shall thereafter have the right to receive upon conversion of Series A Preferred, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Conversion Stock immediately theretofore issuable upon conversion, such stock, securities and/or other assets that the Holder would have been entitled to receive in such

transaction had the Series A Preferred been converted immediately prior to such transaction, and in any such case appropriate provisions shall be made with respect to the rights and interests of the Holders of the Series A Preferred to the end that the provisions hereof (including, without limitation, provisions for the adjustment of the Conversion Price and of the number of shares issuable upon conversion of the Series A Preferred) shall thereafter be applicable, as nearly as may be practicable in relation to any securities thereafter deliverable upon the exercise hereof. The Corporation shall not effect any transaction described in this Section 5(E) unless (A) it first gives at least 30 days prior notice of such merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event (during which time the Holder shall be entitled to convert its shares of Series A Preferred into Conversion Stock) and (B) the resulting successor or acquiring entity (if not the Corporation) assumes by written instrument the obligations of the Corporation under the Amended Articles of Incorporation including this Section 5(E). The provisions of this paragraph shall not apply to the extent that any transaction referred to herein is deemed to be a liquidation pursuant to Section 3.

F. Issuance of Additional Stock below Purchase Price. If the Corporation shall issue, after the date upon which any shares of Series A Preferred were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Series A Preferred in effect immediately prior to the issuance of such Additional Stock (including Additional Stock deemed to be issued pursuant to Section 5(I), the Conversion Price for the Series A Preferred in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 5(F), unless otherwise provided in this Section 5(F).

(i) Adjustment Formula. Whenever the Conversion Price is adjusted pursuant to this Section (5)(F), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for the issuance of the total number of shares of Additional Stock would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock so issued. For purposes of the foregoing calculation, the amount of "Outstanding Common" shall be determined on a fully-diluted basis, assuming the exercise or conversion of all exercisable or convertible options, warrants, purchase rights, and convertible securities, including, but not limited to, the outstanding Preferred Stock and the "Option Pool" (as defined below).

(ii) Definition of "Additional Stock". For purposes of this Section 5(F), "Additional Stock" shall mean any shares (1) issued pursuant to any splits, equity distributions, dividends, recapitalizations, and recombinations and reclassifications of Common or Series A Preferred Stock; and (2) issued by the Corporation of Common or Series A Preferred Stock (or rights to acquire such equity securities or securities convertible into, or exchangeable for, such equity securities) at a price below the original purchase price, in which case, the conversion price for the Series A Preferred will be adjusted on a weighted average basis, other than:

(a) Up to 3,000,000 shares of Common Stock issuable or issued to officers, directors, employees, consultants, and affiliates, of the Corporation pursuant to a stock option or stock purchase plan or agreement approved by the Board of Directors of the Corporation (the "Option Pool");

(b) Common Stock issued or issuable upon conversion of the Series A Preferred Stock;

(c) Common Stock issued or issuable upon conversion of the Warrants;

(d) Common Stock issued or issuable in a transaction approved in advance by the holders of at least two-thirds of the then outstanding Series A Preferred; and

(e) Common or Series A Preferred Stock (or options or warrants to purchase such equity securities) issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions or in connection with bona fide acquisitions, mergers, technology licenses or purchases, corporate partnering agreements, or similar transactions, provided that the terms of such transaction or transactions are unanimously approved by the Board of Directors.

G. No Fractional Adjustments. No adjustment of the Conversion Price for the Series A Preferred shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

H. Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

I. Deemed Issuances of Common Stock. In the case of the issuance (whether before, on or after the Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 5:

(i) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability including, but not limited to, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be



defined to have been issued at the time such options or rights were issued and for consideration equal to the consideration (determined in the manner provided in Section 5(H)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(ii) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for (assuming the satisfaction of any conditions to convertibility or exchangeability, including, but not limited to, the passage of time, but without taking into account potential antidilution adjustments) any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 5(H)).

(iii) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights, upon conversion of or in exchange for such convertible or exchangeable securities or upon exercise of any options or rights related to such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities or upon exercise of any options or rights related to such convertible or exchangeable securities.

(iv) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(v) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 5(I)(i) and 5(I)(ii) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 5(I)(iii) or 5(I)(iv).

J. No Increase in Conversion Price. Notwithstanding any other provisions of this Section 5, except to the limited extent provided for in Sections 5(I)(iii) and 5(I)(iv), no adjustment of the Conversion Price pursuant to this Section 5 shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

K. No Fractional Shares. If any conversion or adjustment under Section 5 would create a fractional share of Conversion Stock or a right to acquire a fractional share of Conversion Stock, such fractional share shall be disregarded upon Conversion and the number of shares of Conversion Stock issuable upon conversion shall be the next lower number of shares and the fractional share shall be paid to the Holder in cash.

Section 6. Redemption.

A. Redemption Option.

Holders of Series A Preferred shall have the right to cause the Corporation to redeem, and upon the exercise of such right the Corporation shall have the obligation to redeem, all or any portion the Shares of Series A Preferred then Outstanding on February 28, 2006 (the "Redemption Date") at a price per Share equal to the Redemption Price.

B. Redemption Procedures.

(i) Notices. On or within thirty (30) days prior to October 31, 2005, the Company shall provide the Investor with written notice of the Redemption Date. The Investor shall provide the Company with written notice of redemption of Shares at least thirty (30) but not more than sixty (60) days prior to the Redemption Date. Failure of the Investor to provide timely notice shall result in forfeiture of its redemption option.

(ii) Redemption. A holder of the Series A Preferred shall not be entitled to receive payment of the Redemption Price for such Shares under Section 6(A) until such holder shall cause to be delivered to the place specified in the notice given with respect to such redemption (i) the Stock Certificates and (ii) transfer instrument(s) satisfactory to the Corporation and sufficient to transfer such Shares to the Corporation free of any adverse interest. No interest shall accrue on the Redemption Price of any Share of Series A Preferred after the Redemption Date. Any Shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares.

C. Dividend on Redemption Shares.

(i) No Share shall be entitled to any dividends accruing after the date on which the Redemption Price of such Share is paid or made available upon surrender of the Stock Certificates representing such Shares to the holder of such Share. On such date, all rights of the holder of such Share shall cease, and such Share shall no longer be deemed to be issued and outstanding.

(ii) Until the Redemption Price is paid or made available, Shares delivered to the Company in accordance with Section 6(B) shall continue to be entitled to dividends after the Redemption Date.



D. Pro Rata Redemption.

If the funds of the Corporation legally available for redemption of Shares on the Redemption Date are insufficient to redeem the total number of Shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of Shares pro rata among the holders of the Shares to be redeemed based upon the aggregate Redemption Price of such Shares held by each such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Shares, such funds shall immediately be used to redeem the balance of the Shares which the Corporation has become obligated to redeem on the Redemption Date, but which it has not redeemed. Prior to any redemption of Series A Preferred, the Corporation shall declare for payment all accrued and unpaid dividends with respect to the Shares which are to be redeemed, but only to the extent of funds of the Corporation legally available for the payment of dividends.

Section 7. Voting Rights.

Except as otherwise provided herein and as otherwise required by applicable law, the Shares of Series A Preferred shall have no voting rights.

Section 8. Registration of Transfer.

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

Section 9. Replacement.

Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any Stock Certificate evidencing Shares of Series A Preferred, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own indemnity agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such Stock Certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series A Preferred represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 10. Definitions.

“Board of Directors” means the board of directors of the Corporation.

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

“Issue Price” of any share shall be equal to \$2.50.

“Liquidation Value” of any Share as of any particular date shall be equal to \$2.50.

“Outstanding” means, as of any date and with respect to the Shares of Series A Preferred, any of such Shares theretofore issued by the Corporation except, without duplication, (i) any of such Shares theretofore cancelled, (ii) any of such Shares as to which the Corporation or any other Affiliate of Corporation shall be the owner or (iii) any of such Shares represented by any certificate in lieu of which a new certificate has been executed and delivered by the Corporation.

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

“Record Date” means the last day of May, August, November and February of each year.

“Redemption Date” has the meaning given thereto in Section 6(A).

“Redemption Price” means, for each Share, the sum of the Liquidation Value thereof plus the accrued but unpaid dividends thereon.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Series A Preferred” has the meaning given thereto in Section 1.

“Share” or “Shares” have the meanings given thereto in Section 2.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any

Person or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability company, partnership, association or other business entity.

## Section 11. Amendment and Waiver.

No amendment, modification or waiver shall be binding or effective with respect to any provision of this Certificate without the prior written consent of the holders of at least a majority of the Shares of Series A Preferred Outstanding at the time such action is taken; provided that no such action shall change (a) the rate at which or the manner in which dividends on the Series A Preferred accrue or the times at which such dividends become payable or the amount payable on redemption of the Series A Preferred or the times at which redemption of Series A Preferred is to occur, without the prior written consent of the holders of at least 100% of the Series A Preferred then Outstanding or (b) the percentage required to approve any change described in clause (a) above, without the prior written consent of the holders of at least 100% of the Series A Preferred then Outstanding.

## Section 12. Notices.

Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, by reputable overnight courier service, charges prepaid, or by facsimile transmission, and shall be deemed to have been given when so mailed or sent (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).