



Planet Payment, Inc.  
670 Long Beach Boulevard  
Long Beach, New York 11561

April 22, 2011

Dear Stockholder:

You are cordially invited to attend the 2011 Annual Meeting of Stockholders of Planet Payment, Inc. We will hold the meeting on Friday, June 3, 2011 at 2:00 p.m. New York time, in our offices at 670 Long Beach Blvd., Long Beach, NY 11561. We hope that you will be able to attend.

Enclosed you will find a notice setting forth the business expected to come before the meeting, the Proxy Statement, a form of proxy and a copy of our 2010 Annual Report.

Your vote is very important to us. Whether or not you plan to attend the meeting in person, your shares should be represented and voted.

Sincerely,

A handwritten signature in black ink, appearing to read "Ph", written in a cursive style.

Philip D. Beck  
Chairman and Chief Executive Officer



Planet Payment, Inc.  
670 Long Beach Boulevard  
Long Beach, New York 11561

## NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

**TIME AND DATE:** 2:00 p.m., N.Y. time, on Friday, June 3, 2011.

**PLACE:** 670 Long Beach Blvd, Long Beach, NY 11561.

**ITEMS OF BUSINESS:**

- Election of directors;
- Increase in authorized Common Stock;
- Increase in Common Stock allocated to the 2006 Equity Incentive Plan;
- Ratification of Appointment of Independent Auditors;
- Such other matters as may properly come before the meeting or any adjournment thereof.

Only stockholders of record at the close of business on April 8, 2011 (the “**Record Date**”), are entitled to vote at the meeting, or any adjournment thereof. Stockholders are reminded that shares cannot be voted unless the signed proxy form is returned, the stockholder attends the meeting in person, or other arrangements are made to have the shares represented at the meeting. **PLEASE SUBMIT YOUR PROXY AS SOON AS POSSIBLE IN THE MANNER SHOWN ON THE PROXY CARD.**

For organizational purposes, all stockholders are requested to notify the Company not later than May 27, 2011, if they intend to attend the Annual Meeting.

This Notice and the accompanying form of proxy card are being mailed and e-mailed beginning on or about April 22, 2011, to stockholders entitled to vote. The Planet Payment, Inc. 2010 Annual Report (“**Annual Report**”), including the Audited Consolidated Financial Statements of the Company and its subsidiaries for the period ended and as of December 31, 2010, is included with this Notice and is posted on the Company’s Investor Relations website at [www.planetpayment.com/investors](http://www.planetpayment.com/investors), as is this Notice and the Proxy Statement. Corporate governance information and disclosures, in accordance with applicable best practice guidelines, are included in the Corporate Governance section of the Annual Report.

BY ORDER OF THE BOARD

DATE OF THIS NOTICE April 22, 2011.

Graham N. Arad,  
Corporate Secretary

**PLANET PAYMENT, INC.**  
**PROXY STATEMENT**  
**ANNUAL MEETING OF STOCKHOLDERS**  
**June 3, 2011**

**RESOLUTIONS TO BE PROPOSED AT THE ANNUAL MEETING**

**PROPOSAL NO. 1**

**ELECTION OF DIRECTORS**

**Information Concerning Nominees**

The Board of Directors (the “*Board*”) has nominated Lady Judge and Shane Kim for election to the Board, to hold office until the relevant Annual Meeting of Stockholders and until their respective successors are duly elected and qualified, as provided below under the heading “Classified Board.”

*Classified Board.* Under the Company’s By-Laws, the Board is divided into three classes. The nominees to the Board specified herein and on the proxy card and the remaining directors, are designated in the following classes:

- Class One comprises Mr. McColl and Mr. Kaiden, each of whom hold office for two more years, until the second Annual Meeting following the upcoming Meeting and are not required to be re-elected at this time.
- Class Two comprises Lady Judge and Mr. Kim each of whom would hold office for three years, until the third Annual Meeting following the upcoming Annual Meeting.
- Class Three comprises Mr. Beck and Mr. Arad, each of whom holds office for one more year, until the Annual Meeting following the upcoming Annual Meeting and are not required to be re-elected at this time.

Information about each nominee, including biographical data for at least the last five years, is provided below. In the event any nominee is unable or declines to serve as a director at the time of the Annual Meeting, the proxies will be voted for any nominee who may be designated by the present Board to fill the vacancy. As of the date of this notice, the Board is not aware of any nominee who is unable or will decline to serve as a director. The two (2) nominees receiving the

highest number of affirmative votes of the shares entitled to vote at the Annual Meeting will be elected directors of the Company.

The shares represented by the proxies will be voted in favor of the election as directors of the persons named below unless authority to do so is withheld.

### **Lady Judge, Non-Executive Director**

Lady Judge was trained as a lawyer in her native USA, Lady Judge was appointed the youngest ever Commissioner of the US Securities and Exchange Commission in 1980. She moved to Hong Kong as a main board member for merchant bank Samuel Montagu & Co. Based in London since 1993, Lady Judge has held senior positions in a number of financial companies, including the deputy chairmanship of both Friends Provident plc, and corporate governance bodies, such as the UK Financial Reporting Council. In 2002, she joined the United Kingdom Atomic Energy Authority as a non-executive director and became its Chairman in 2004. In 2010, she became Chairman of the UK Pension Protection Fund. Lady Judge is also a non-executive director of Magna International Inc., Bekaert SA and Statoil ASA. In addition, she is a trustee of the Royal Academy and a Governor of the Ditchley Foundation and a member of the Trilateral Commission. In addition, in 2010 she was appointed by the Prime Minister as a UK Business Ambassador, and will support the Government in promoting business and developing opportunities worldwide. Lady Judge has been a member of our Board of Directors since 2006 and also serves on the Company's Remuneration Committee.

### **Shane Kim, Non-Executive Director**

Shane Kim joined Camden Partners in 1999, and became a Managing Member in 2007. Camden Partners is a leading growth private equity firm specializing in business services, healthcare and education. Mr. Kim specializes in payments and transaction processing investments within the business services and healthcare sectors. Mr. Kim was also a portfolio manager of Camden's small-cap hedge fund from 2004 to 2009. Since 2001, Mr. Kim has sourced or led several private equity investments on behalf of Camden Partners. Mr. Kim currently represents Camden Partners as a Director of Santa Rosa Consulting, Inc. Previous board roles representing Camden Partners include COHR, Inc. dba Masterplan (acquired), Cardsystems Solutions, Inc. (acquired), Vantage Oncology, Inc., and New Horizons Worldwide, Inc. Mr. Kim also served on the MBA Advisory Council for the Eller College of Management at the University of Arizona (2004-2005). Mr. Kim has been an observer on the Board of the Company since 2007, when he was appointed on behalf of Camden Partners following its initial investment in Convertible Debt of the Company. Mr. Kim graduated from the University of Maryland (Robert H. Smith School) with a B.S. in Finance and Management Science and Statistics in 1998. Shane Kim was appointed to our Board of Directors in April 2011.

The Board considers the election of the nominees to be in the best interests of the Company and recommends that you vote **FOR** each director nominee.

## PROPOSAL NO. 2

### INCREASE IN AUTHORIZED STOCK

At the Meeting, Stockholders will be asked to adopt the Company's Amended and Restated Certificate of Incorporation substantially in the form enclosed (the "*Restated Certificate*"). The sole change in the Restated Certificate is an increase in the authorized stock from 70,000,000 to 80,000,000 shares of Common Stock, \$0.01 par value ("*Common Stock*").

The Company's authorized and outstanding stock currently consists of the following:

Common Stock – 70,000,000 shares authorized, of which 46,245,692 shares were outstanding as of the Record Date. 6,169,088 shares were subject to outstanding warrants, convertible notes and other rights and 8,133,397 shares were allocated to the Company's 2006 Equity Incentive Plan (*the "Plan"*).

Preferred Stock – 4,000,000 shares authorized, of which 2,243,750 shares of Series A Preferred Stock were outstanding as of the Record Date which are convertible into 6,851,144 shares of Common Stock.

The primary reasons for the increase include the following: (i) to make available shares to be allocated to the Plan and (ii) to provide a sufficient cushion of reserved shares for general corporate purposes. The issuance of additional shares of Common Stock for any of these or other reasons would dilute the voting powers and economic rights of existing holders of Common Stock.

Increasing the authorized Common Stock may provide the Board with flexibility to issue Preferred Stock in future financings, and to determine the number of shares of Common Stock into which the Preferred Stock would be convertible, **without further approval of the Common Stockholders**. Note that there is no guarantee that the Company will be able to secure additional financing on suitable terms.

Finally, the proposed increase in authorized Common Stock would also be available for future business developments and capital requirements. Potential uses include, without limitation, funding the acquisition of other companies or assets, equity arrangements with consultants, satisfying the equity component of loan arrangements, equipment leases, real estate leases, and general commercial agreements, employee benefit arrangements and plans, and additional raises of equity capital.

The Board considers the proposal to be in the best interests of the Company and recommends that you vote **FOR** the resolution.

### PROPOSAL NO. 3

#### AMENDMENT TO 2006 EQUITY INCENTIVE PLAN TO ALLOCATE ADDITIONAL COMMON STOCK AVAILABLE FOR AWARDS UNDER THE PLAN

At the Meeting, stockholders will be asked to approve a proposal to increase the authorized Common Stock available for awards under the Company's Plan by 3,000,000 shares, to a total of 11,133,397 shares. The Board and management firmly believe that it is important to attract, retain and motivate the right personnel, in order to ensure the future success of the Company. In a competitive employment environment, stock options and similar equity based compensation are an important component in a remuneration package. The purpose of the Plan is to provide incentives to eligible persons whose present and potential contributions are important to the success of the Company and its subsidiaries by offering them an opportunity to participate in the Company's future performance through awards of options, restricted stock, stock bonuses, stock appreciation rights and restricted stock units. Furthermore, management considers that the grant of stock options and other equity-based compensation aligns the interests of employees with stockholders, in terms of striving to achieve increasing stockholder value.

The Company has a single Plan for all employees and it is management's policy that every employee who stays with the Company should eventually be granted options and become a stockholder in the Company. Awards are also made from time to time to consultants and professional service providers who work closely with the Company over an extended period. All management and employees' awards are subject to vesting provisions, which normally require three years of service to obtain the full benefit. In addition, awards for management personnel under the Plan may be made subject to various objective performance vesting conditions, such as revenue and profitability targets, or other specific operational goals. The Plan is administered by the Remuneration Committee of the Board, which is comprised entirely of non-executive directors and all of the awards are made at an exercise price equal to or greater than the fair market value of the Common Stock on the date of grant.

*Common Stock Authorized for Issuance.* The Plan includes limits on the number of Common Stock that are available for awards under the Plan as follows:

The Plan originally provided for an authorized pool of 2,400,000 shares of Common Stock, which was increased by virtue of lapses in options under the Company's 2000 Stock Incentive Plan (the "**2000 Plan**") and with the approval of the stockholders at subsequent Annual Meetings. Under the Plan, and the 2000 Plan the Company's aggregate option pool (including currently outstanding options) is limited to 15% of the Company's fully diluted capitalization (including shares subject to outstanding options, warrants and other securities), up to a maximum authorization of 8,299,055 shares of Common Stock (This number has been subsequently reduced as shown in the table below by virtue of option exercises.) In addition, in accordance with U.K. best practice guidelines, the number of Common Stock issuable under grants of awards made after admission of the Company's Common Stock to trading on the AIM market of the London Stock Exchange ("**Admission**") (i.e. excluding options outstanding prior to March 20, 2006) should not exceed 10% of the Company's issued Common Stock (as defined in the

Plan). No further options or other awards may be granted under the Company's 2000 Plan, but options issued under the 2000 Plan that are outstanding will continue to be governed by the terms of that plan and are included for the purpose of calculating the 15% limit. If any of those options are cancelled, forfeited or expire, the Common Stock subject to those options will become available for issuance under the Plan. In addition, if options granted under the Plan are cancelled, forfeited or expire, or if restricted stock granted under the Plan is repurchased by the Company, such Common Stock will again be available for grant and issuance under the Plan.

The following table shows the number of Common Stock subject to the Plan and the effect of the proposed increase.

Total Common Stock allocated to the Plan and the 2000 Plan as of April 8, 2011:	8,133,397
Total Shares available for grants under the Plan as of April 8, 2011:	525,504
Proposed increase in Common Stock allocated to the Plan:	3,000,000
Total Common Stock allocated to the Plan and the 2000 Plan following the passing of the Resolutions:	11,133,397
Percentage of fully diluted capitalization:	15.8%
Total Common Stock issuable under Option grants after Admission following the passing of the Resolutions:	8,243,351
Percentage of issued share capital:	12.88%

At the meeting, stockholders will be requested to approve a Resolution authorizing the allocation of an additional 3,000,000 shares of Common Stock to the Plan, notwithstanding the limits otherwise imposed under the Plan. The principal reason for the proposed increase is the proposed adoption of a long term incentive plan for senior management intended to align management incentives with increasing shareholder value over a period of years. Awards made under this plan will be conditional upon the achievement of certain profitability and shareholder value targets over a period of years. Further details will be provided in due course. The Board has determined that this increase is in the best interests of the Company and its stockholders. Allocation of additional Common Stock to the Plan does not mean that awards in respect of all such Common Stock will be granted or that awards that have been or may be granted will be exercised in due course.

The Board considers the proposal to be in the best interests of the Company and recommends that you vote **FOR** the resolution.

## PROPOSAL NO. 4

### RATIFICATION OF APPOINTMENT OF AUDITORS

The auditors of Delaware corporations are appointed by the Board of Directors rather than the stockholders, as is customary with UK companies. The Audit Committee of the Board (the “*Audit Committee*”) has appointed Deloitte & Touche LLP (“*Deloitte*”) as the independent auditors for the Company. However, in accordance with customary U.S. public company practice, the Board is proposing a resolution to ratify the appointment of Deloitte for the year ending December 31, 2010. If the stockholders do not ratify the appointment, then the Audit Committee will reconsider the appointment of Deloitte as the independent auditors of the Company for future years.

Deloitte has served as independent auditors for the Company since 2005. They have unrestricted access to the Audit Committee to discuss audit findings and other financial matters. The Audit Committee of the Board of Directors believes that Deloitte is knowledgeable about the Company’s operations and accounting practices and is well qualified to act in the capacity of independent auditors.

In appointing Deloitte as the Company’s independent auditors, and making its recommendation that stockholders ratify the appointment, the Audit Committee considered whether the audit and non-audit services Deloitte provides are compatible with maintaining the independence of the Company’s outside auditors. In addition, while the Committee believes that Deloitte may be able to provide tax services to the Company without impairing the auditor’s independence, absent unusual circumstances, the Audit Committee does not expect to retain Deloitte to provide tax services. Since 2005, Deloitte has also conducted an examination of the Company’s systems and controls under Statement on Accounting Standards No. 70 – Service Organizations and provided its report thereon.

The Board considers the proposal to be in the best interests of the Company and recommends that you vote **FOR** the resolution.

## Other Matters of Business

The Board knows of no other matters that may properly be, or are likely to be, brought before the meeting. If other proper matters are introduced at the meeting, the individuals named as proxies on the enclosed proxy form are also authorized to vote upon such matters utilizing their own discretion.

## The Resolutions

The Resolutions attached to this Notice are proposed in order to: (i) elect the nominated directors; (ii) increase the authorized Common Stock; (iii) increase the Common Stock allocated to the Plan and (iv) ratify the appointment of the auditors.

## Required Votes

The votes required to approve each proposal are as follows:

- *Proposal No. 1 -- Election of Directors.* Directors will be elected by a plurality of the votes of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote (including the Series A Preferred Stock, treated on an as-converted to Common Stock basis).
- *Proposal No. 2 -- Adoption of Amended and Restated Certificate of Incorporation.* Approval of Proposal No. 2 requires the affirmative vote by holders of at least 67% of the shares of Common Stock present in person or voting by proxy at the Annual Meeting and entitled to vote, and by at least a majority of the shares outstanding (including the Series A Preferred Stock, treated on an as-converted to Common Stock basis). **Please note that due to the requirement to obtain the votes of a majority of the shares outstanding for this resolution, an abstention may be considered a vote against the resolution. All shareholders are therefore urged to cast their votes accordingly.**
- *Proposals No. 3 and 4. --Increase in Common Stock Allocated to Equity Incentive Plan and Ratification of Auditors' Appointment.* Approval of each of Proposals No. 3 and 4 requires the affirmative vote by holders of at least a majority of the shares (including the Series A Preferred Stock, treated on an as-converted to Common Stock basis) present in person or voting by proxy at the Annual Meeting and entitled to vote.

**The Board recommends that all stockholders vote in favor of each of the Proposals. Each member of the Board intends to vote his own holdings in favor of each Proposal. These shares represent 6.3% of the voting power of the issued and outstanding shares as of the Record Date.**

## Voting Procedure

**The Board welcomes all stockholders to attend the meeting in person and requests those stockholders not planning to attend to please sign and return their proxy forms as soon as possible.**

*Stockholders who hold shares in their own name.*

If you wish to vote by proxy, please sign and return the enclosed Proxy Form as soon as possible and **we urge you to send this to be received no later than Wednesday, June 1, 2011** to

**Stockholders Outside of the United States:**

To the Company's Registrar ComputerShare by **fax to +44 1534 825 315**

**Stockholders In the United States:**

To the Company by **fax to +1 516 706-0695**

*Stockholders whose shares are held in their broker's name.*

Please follow the voting instructions on the enclosed Proxy Form supplied by your broker and return the form as soon as possible.

If you wish to attend the meeting in person you must request an Admission Card, with evidence of your stock ownership which you can obtain from your broker.

If you have any questions regarding any of the matters referred to in this Notice, please do not hesitate to contact Graham N. Arad, by telephone on +1 (516) 670-3200, or by e-mail to [garad@planetpayment.com](mailto:garad@planetpayment.com).

**PLANET PAYMENT, INC.**

**RESOLUTIONS OF THE STOCKHOLDERS TO BE PROPOSED  
AT THE ANNUAL MEETING TO BE HELD ON JUNE 3, 2011**

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**PROPOSAL No. 1**

**RESOLVED**, that Lady Judge be and she is hereby elected as a Class Two Director of the Company to hold office until the third Annual Meeting following this Annual Meeting and until her successor is duly elected and qualified.

**RESOLVED**, that Shane Kim be and he is hereby elected as a Class Two Director of the Company to hold office until the third Annual Meeting following this Annual Meeting and until his successor is duly elected and qualified

**PROPOSAL No. 2**

**Amended and Restated Certificate of Incorporation**

**WHEREAS**, the Board of Directors has deemed it to be in the best interest of the Corporation and its stockholders to authorize the issuance of additional shares of Common Stock;

**NOW, THEREFORE IT IS RESOLVED**, that the Company adopt the Amended and Restated Certificate of Incorporation, in substantially the form enclosed (with such changes as are requested by the Delaware Secretary of State), which would provide for an increase of 10,000,000 shares in the authorized Common Stock to 80,000,000 shares; and

**RESOLVED FURTHER**, that the Board of Directors is hereby directed to take any and all necessary actions to cause the Amended and Restated Certificate of Incorporation adopted herein to be duly executed and filed in the State of Delaware.

**PROPOSAL No. 3**

**Increase in authorized Common Stock allocated to the 2006 Equity Incentive Plan**

**WHEREAS**, the Board of Directors has approved an increase of 3,000,000 in the number of shares of the Common Stock allocated to the Company's Plan, subject to approval by the stockholders of the Company within the next twelve months

**NOW, THEREFORE, IT IS RESOLVED**, that the stockholders hereby approve the increase of 3,000,000 in the number of Common Stock allocated to the Company's Plan.

**PROPOSAL No. 4**

**Ratification of Appointment of Independent Auditors**

**WHEREAS**, the Board of Directors acting through the Audit Committee of the Board has appointed Deloitte & Touche LLP (“*Deloitte*”) as the independent auditors of the Company for the year 2010.

**NOW, THEREFORE, IT IS RESOLVED**, that the stockholders hereby ratify and approve the appointment of Deloitte as the independent auditors of the Company.

## EXHIBIT 1

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
PLANET PAYMENT, INC.

Planet Payment, Inc. a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”) hereby certifies as follows:

**FIRST** The name of the corporation is Planet Payment, Inc., and it is a Delaware corporation. The original certificate of incorporation was filed with the Secretary of State on October 12, 1999 under the name “Planet Group, Inc.”

**SECOND** This Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Corporation’s Certificate of Incorporation as heretofore amended or supplemented. This Certificate has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, by resolutions of the directors and stockholders of the Corporation.

**THIRD** The Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety, as follows:

1. The name of the Corporation is Planet Payment, Inc.
2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.
3. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
4. The total number of shares of stock, which the Corporation shall have authority to issue, is 80,000,000 shares of Common Stock of \$0.01 par value each (“*Common Stock*”) and 4,000,000 shares of Convertible Preferred Stock of \$0.01 par value each (“*Preferred Stock*”). The Preferred Stock shall have attached thereto all such rights and privileges as may be determined by resolution of the Board of Directors of the Corporation, prior to the issuance thereof and as set forth in a Certificate of Designation relating to the Preferred Stock to be executed and filed pursuant to Section 151(g) of the General Corporation Law of the State of Delaware. As of the date of filing of this Amended and Restated Certificate of Incorporation, an

aggregate of 2,243,750 shares of Preferred Stock have been designated as “Series A Preferred Stock”, with the rights, preferences, privileges and restrictions set forth on the Certificate of Designation attached hereto as Exhibit A.

5. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit.

6. Any amendment, alteration or repeal of any provision of, or addition of any provision to, the Corporation’s certificate of incorporation, or any other action which would adversely affect the rights of holders of the Common Stock with respect to voting, dividends, liquidation preferences, conversion or redemption, shall not be adopted or effected unless approved by (i) the holders of shares of Common Stock, present in person or by proxy at any meeting of stockholders duly called and held, carrying not less than 67% of the votes of shares of Common Stock held by persons present in person or by proxy at such meeting; or (ii) a written resolution relating to such matters signed by the holders of not less than 67% of the issued and outstanding shares of Common Stock in the Company.

IN WITNESS WHEREOF, said corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer this \_\_\_ day of \_\_\_\_\_, 2011 and the foregoing facts stated herein are true and correct.

**PLANET PAYMENT, INC.**

By: \_\_\_\_\_  
Name: Philip D. Beck  
Title: President

**Exhibit A**

**CERTIFICATE OF DESIGNATION OF  
SERIES A PREFERRED STOCK OF  
PLANET PAYMENT, INC.**

**A. Designation and Amount.** Of the 4,000,000 shares of Preferred Stock, par value \$0.01 per share, authorized to be issued by this corporation, 2,243,750 shares are hereby designated as “Series A Preferred Stock.” Such number of shares may be increased or decreased by resolution of the Corporation’s Board of Directors, provided that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding.

**B. Rights, Preferences and Restrictions of Series A Preferred Stock.** The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock are as follows:

**1. Definitions.**

- (a) “*Board*” shall mean the Board of Directors of the Corporation.
- (b) “*Corporation*” shall mean this corporation.
- (c) “*Common Stock*” shall mean the Common Stock, \$0.01 par value, of the Corporation.
- (d) “*Common Stock Dividend*” shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.
- (e) “*Common Stock Event*” shall mean (i) the issue by the Corporation of additional shares of Common Stock as a Common Stock Dividend or other distribution on outstanding Common Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock.
- (f) “*Conversion Price*” shall mean \$1.31 as of the date of filing of this Amended and Restated Certificate of Incorporation, as adjusted pursuant to Section 4.4 below.
- (g) “*Convertible Securities*” shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.
- (h) “*Merger*” shall mean a consolidation or merger (or similar transaction or series of transactions) of the Corporation with or into any other corporation or corporations or

the sale of all of the capital stock of the Corporation in a single transaction or series of related transactions, in each case under circumstances in which the holders of the Corporation's outstanding shares immediately before such transaction or series of related transactions do not, immediately after such transaction or series of related transactions, retain stock representing a majority of the voting power of the surviving corporation (or its parent corporation if the surviving corporation is wholly owned by the parent corporation) of such transaction or series of related transactions, on account of the shares of capital stock of the Corporation held by them immediately prior to such transaction or series of related transactions.

(i) “**Original Issue Date**” shall mean November 10, 2004, the date on which the first share of Series A Preferred Stock was issued by the Corporation.

(j) “**Original Issue Price**” shall mean \$4.00, which is the price per share for the Series A Preferred Stock paid by the Purchasers in Section 1 of the Subscription Agreement (as defined below), as adjusted to the extent necessary to reflect any Preferred Stock Event.

(k) “**Preferred Stock**” shall mean the Series A Preferred Stock and any other series of Preferred Stock authorized under the Certificate of Incorporation of the Corporation.

(l) “**Preferred Stock Event**” shall mean any of the following events occurring after the Original Issue Date: (A) the issuance by the Corporation of additional shares of Series A Preferred Stock as a dividend or other distribution on the outstanding shares of Series A Preferred Stock, (B) a subdivision of the outstanding shares of Series A Preferred Stock into a greater number of shares of Series A Preferred Stock, (C) a combination of the outstanding shares of Series A Preferred Stock into a small number of shares of Series A Preferred Stock, and (D) the conversion or exchange of the outstanding shares of Series A Preferred Stock into a different number of shares of some other class or classes of stock whether by recapitalization, reclassification or otherwise; provided, however, that in no event shall a Preferred Stock Event be deemed to include any liquidation, dissolution or winding up of the Corporation provided for in Section 2 or any conversion or other adjustment event described in Section 4.

(m) “**Rights or Options**” shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

(n) “**Series A Preferred Stock**” shall mean the Series A Preferred Stock, \$0.01 par value per share, of the Corporation.

(o) “**Subscription Agreement**” shall mean that certain Subscription Agreement dated November 10, 2004, among the Company and the persons and entities listed on Schedule 1 thereto, as amended by that certain letter agreement dated October 31, 2005, as further amended from time to time. The Subscription Agreement is incorporated by reference into this Certificate of Designation. A copy of the Subscription Agreement is on file in the office of the Secretary of the Corporation, and may be obtained by holders of Series A Preferred Stock upon written request to the Secretary of the Corporation.

(p) “**Valuation**” shall have the meaning ascribed to such term in the Subscription Agreement.

2. **Liquidation Rights.** In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the funds and assets that may be legally distributed to the Corporation's stockholders (the "***Available Funds and Assets***") shall be distributed to stockholders in the following manner:

2.1 **Liquidation Preference.** Subject to prior payment in full of the liquidation preference of any shares of any series of Preferred Stock (or any other stock) ranking prior and superior to the Series A Preferred Stock, the holders of each share of Series A Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an amount per share equal to the Original Issue Price of the Series A Preferred Stock, plus all declared but unpaid dividends on the Series A Preferred Stock. If upon any liquidation, dissolution or winding up of the Corporation, and after payment in full of the preferential amount payable to any shares of any series of Preferred Stock (or any other stock) ranking prior and superior to the Series A Preferred Stock, the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series A Preferred Stock and to holders of each share of Preferred Stock then outstanding which ranks *pari passu* with the Series A Preferred Stock as to liquidation preference ("***Pari Passu Preferred Stock***") of their full preferential amount described in this subsection, then all of the remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series A Preferred Stock and the *Pari Passu Preferred Stock* pro rata, according to the aggregate full preferential amount payable with respect to all the then-outstanding shares of each such series of Preferred Stock.

2.2 **Remaining Assets.** If there are any Available Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) to the holders of the Series A Preferred Stock of their full preferential amounts described subsection 2.1, then all such remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Common Stock on a pro rata basis according to the number of shares of Common Stock held by each holder thereof.

2.3 **Merger or Sale of Assets.** A Merger or a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Corporation, in a single transaction or a series of transactions, shall also be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 2; provided that the holders of a majority of the Series A Preferred Stock may elect by written notice not to treat such event as a liquidation, dissolution or winding up, for the purposes of this Section.

2.4 **Non-Cash Consideration.** If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as determined by the Board in good faith, except that any securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(a) The method of valuation of securities not subject to investment letter or other similar restrictions on free marketability shall be as follows:

(i) unless otherwise specified in a definitive agreement for the acquisition of the Corporation, if the securities are then traded on a national securities exchange or the Nasdaq National Market (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30 day period ending three days prior to the distribution; and

(ii) if (i) above does not apply but the securities are actively traded over-the-counter, then, unless otherwise specified in a definitive agreement for the acquisition of the Corporation, the value shall be deemed to be the average of the closing bid prices over the 30 calendar day period ending three (3) trading days prior to the distribution; and

(iii) if there is no active public market as described in clauses (i) or (ii) above, then the value shall be the fair market value thereof, as determined in good faith by the Board.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subparagraphs (a)(i), (ii) or (iii) of this subsection to reflect the approximate fair market value thereof, as determined in good faith by the Board.

### **3. Voting Rights.**

3.1 Voting Generally. Each holder of shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such shares of Series A Preferred Stock could be converted pursuant to the provisions of Section 4 at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of stockholders is solicited. Subject to the other provisions of this Certificate of Incorporation, each holder of Series A Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Series A Preferred Stock shall vote together with the holders of shares of other series of Preferred Stock and the holders of Common Stock, and not as a separate series or class.

**4. Conversion Rights.** The outstanding shares of Series A Preferred Stock shall be convertible into Common Stock as follows:

4.1 Optional Conversion. At the option of the holder thereof, each share of Series A Preferred Stock shall be convertible, at any time or from time to time, into fully paid and nonassessable shares of Common Stock as provided herein. Each holder of Series A Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series A Preferred Stock or Common Stock, and shall give written notice to the

Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Series A Preferred Stock being converted. Thereupon the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Series A Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

#### 4.2 Automatic Conversion.

(a) Each share of Series A Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein: (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation (an “*IPO*”) in which the aggregate total valuation of the Company’s capital stock, based on the public offering price per share (before deduction of underwriters’ discounts and commissions) and assuming the conversion or exercise of all Preferred Stock and Rights or Options into Common Stock, equals or exceeds an amount equal to two (2) multiplied by the Valuation and aggregate net proceeds received by the Corporation are at least \$25 million (a “*Qualifying IPO*”); or (ii) upon the Corporation’s receipt of the written consent of the holders of not less than 2/3rds of the then outstanding shares of Series A Preferred Stock to the conversion of all then outstanding Series A Preferred Stock under this Section 4.

(b) Upon the occurrence of any event specified in subparagraph 4.2(a) above, the outstanding shares of Series A Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series A Preferred Stock, the holders of Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series A Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

4.3 Conversion Price. Each share of Series A Preferred Stock shall be convertible in accordance with subsection 4.1 or subsection 4.2 above into the number of shares of Common Stock which results from dividing the Original Issue Price for the Series A Preferred Stock by the Conversion Price that is in effect at the time of conversion. The Conversion Price

of the Series A Preferred Stock shall be subject to adjustment from time to time as provided below. Following each adjustment of the Conversion Price, such adjusted Conversion Price shall remain in effect until a further adjustment of the Conversion Price hereunder.

4.4 Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event (as hereinafter defined) after the Original Issue Date, the Conversion Price of the Series A Preferred Stock shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price of the Series A Preferred Stock in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the product so obtained shall thereafter be the Conversion Price for the Series A Preferred Stock.

4.5 Adjustments for Other Dividends and Distributions. If, at any time or from time to time after the Original Issue Date, the Corporation pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Corporation, other than an event constituting a Common Stock Event, then in each such event provision shall be made so that the holders of Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Corporation which they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of Series A Preferred Stock or with respect to such other securities by their terms.

4.6 Adjustment for Reclassification, Exchange and Substitution. If, at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series A Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger, or consolidation provided for elsewhere in this Section 4), then in any such event each holder of Series A Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series A Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

4.7 Reserved.

4.8 Reserved.

4.9 Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for Series A Preferred Stock, the Corporation, at its expense, shall cause

its Chief Financial Officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series A Preferred Stock at the holder's address as shown in the Corporation's books.

4.10 Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of Series A Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion.

4.11 Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

4.12 Notices. Any notice required by the provisions of these Certificate of Incorporation to be given to the holders of shares of Series A Preferred Stock shall be deemed given upon the earlier of actual receipt or deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, or delivery by a recognized express courier, fees prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

4.13 No Impairment. The Corporation shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the rights, preferences and privileges of the holders of Series A Preferred Stock against impairment.

**5. Dividends**. If the Board declares and pays any dividend on the Common Stock, such dividend shall also be declared and paid on each outstanding share of Series A Preferred Stock based on the number of whole shares of Common Stock into which such share of Series A Preferred Stock then could be converted pursuant to the provisions of subsection 4.1. Except as provided in the preceding sentence, holders of Series A Preferred Stock shall not be entitled to receive any dividends. No rights or interest shall accrue to the holders of the Series A Preferred Stock by reason of the fact that the Corporation shall fail to declare or pay dividends on the Common Stock or Series A Preferred Stock in any calendar year or any fiscal year of the Corporation, whether or not the earnings of the Corporation in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part.

**6. Reserved**.

7. **Miscellaneous.**

7.1 No Reissuance of Series A Preferred Stock. No share or shares of Series A Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

7.2 Preemptive Rights. No stockholder of the Corporation shall have a right to purchase shares of capital stock of the Corporation sold or issued by the Corporation except to the extent that such a right may from time to time be set forth in a written agreement between the Corporation and a stockholder.

7.3 Adjustments for Stock Splits, Etc. Except as otherwise required by law, wherever in this Certificate of Designation there is a reference to a specific number of shares Series A Preferred Stock, then, upon the occurrence of any Common Stock Event or Preferred Stock Event, the specific number of shares so referenced herein shall automatically be proportionally adjusted to reflect the effect on the outstanding shares of such class or series of stock by such Common Stock Event or Preferred Stock Event, as applicable.