

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

**FORM S-3**  
**REGISTRATION STATEMENT**  
**UNDER THE SECURITIES ACT OF 1933**

**FRANKLIN COVEY CO.**

(Exact Name of Registrant as Specified in its Charter)

**Utah**  
(State or other jurisdiction of  
incorporation or organization)

**87-0401551**  
(I.R.S. Employer  
Identification No.)

**2200 West Parkway Boulevard**  
**Salt Lake City, Utah 84119-2099**  
**(801) 817-1776**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Robert A. Whitman**  
**President and Chief Executive Officer**  
**2200 West Parkway Boulevard**  
**Salt Lake City, Utah 84119-2099**  
**(801) 817-1776**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

**Copy to:**  
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**DORSEY & WHITNEY LLP**  
**170 South Main Street, Suite 900**  
**Salt Lake City, Utah 84101-1655**  
**Telephone: (801) 933-7360**  
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**Approximate date of commencement of proposed sale to the public:**

From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

## CALCULATION OF REGISTRATION FEE

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed Maximum Offering Price per Share (2)</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee (2)</b>
Common stock, \$0.05 par value per share, underlying warrants	325,686	\$ 8.00	\$ 2,605,488	\$ 278.79

- (1) This Registration Statement also covers such indeterminate number of additional shares as may become issuable pursuant to Rule 416 promulgated under the Securities Act of 1933, as amended, as a result of anti-dilution adjustments.
- (2) For purposes of calculating the registration fee for the common shares underlying the warrants, based on the highest exercise price of the warrants pursuant to Rule 457(g) under the Securities Act of 1933, as amended.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to completion: Dated February 2, 2006**

## **FRANKLIN COVEY CO.**

**325,686 Shares of Common Stock**

On March 8, 2005, we completed a recapitalization that effectively bifurcated our outstanding Series A Preferred Stock into two separate securities: (1) new Series A Preferred Stock with revised terms and rights and (2) warrants to purchase shares of common stock at \$8.00 per share with an eight-year exercise period. This prospectus relates to the sale, transfer or distribution of up to 325,686 shares of our common stock, \$0.05 par value per share, issuable upon the exercise of such warrants. We will receive the proceeds from the exercise of the warrants. We will not receive any proceeds from the further sale of the common stock issuable upon the exercise of those warrants.

Our common stock is listed and traded on the New York Stock Exchange under the symbol "FC." On February 1, 2006, the average of the high and low prices of our common stock on the NYSE was \$7.10 per share.

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**The shares of common stock offered or sold under this prospectus involve a high degree of risk. You should carefully consider the risk factors beginning on page 3 of this prospectus before purchasing any of the shares of common stock offered under this prospectus.**

**Neither the Securities and Exchange Commission, any state securities commission, nor any other regulatory authority has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

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The date of this prospectus is       , 2006.

### **TABLE OF CONTENTS**

	<b>Page</b>
<a href="#">PROSPECTUS SUMMARY</a>	<a href="#">1</a>
<a href="#">RISK FACTORS</a>	<a href="#">2</a>
<a href="#">SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</a>	<a href="#">6</a>
<a href="#">USE OF PROCEEDS</a>	<a href="#">7</a>
<a href="#">PLAN OF DISTRIBUTION</a>	<a href="#">7</a>
<a href="#">DESCRIPTION OF CAPITAL STOCK</a>	<a href="#">7</a>
<a href="#">LEGAL MATTERS</a>	<a href="#">7</a>
<a href="#">EXPERTS</a>	<a href="#">7</a>
<a href="#">WHERE YOU CAN FIND MORE INFORMATION</a>	<a href="#">7</a>

*You should rely only on the information contained in this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.*

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*In this prospectus, "we," "us," "our" and "FranklinCovey" refers to Franklin Covey Co. and each of its operating divisions and subsidiaries.*

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## PROSPECTUS SUMMARY

This summary does not contain all of the information you should consider before investing in our common stock. You should read the entire prospectus, including the risks discussed under the caption "Risk Factors" and the information incorporated by reference from our periodic reports, for important information regarding our company and our common stock before making the decision to invest.

### General

We seek to improve the effectiveness of organizations and individuals. We are a worldwide leader in providing integrated learning and performance solutions to organizations and individuals that are designed to enhance strategic execution, productivity, leadership, sales force performance, effective communications, and other skills. Each performance solution may include products and services that encompass training and consulting, assessment, and various application tools that are generally available in electronic or paper-based formats. Our products and services are available through professional consulting services, public workshops, retail stores, catalogs, and the Internet at [www.franklincovey.com](http://www.franklincovey.com). Historically, our best-known offerings include the FranklinCovey Planner™ and a suite of new and updated individual-effectiveness and leadership-development training products based on the best-selling book *The 7 Habits of Highly Effective People*. We also offer a range of training and assessment products to help organizations achieve superior results by focusing and executing on top priorities, building the capability of knowledge workers, and aligning business processes. These offerings include the popular workshop *FOCUS: Achieving Your Highest Priorities*™, *The 4 Disciplines of Execution*™, *The 4 Roles of Leadership*™, *Building Business Acumen: What the CEO Wants You to Know*™, the Advantage Series communication workshops, and the *Execution Quotient* (xQ™) organizational assessment tool. Nearly 1,500 FranklinCovey associates world-wide delivered timeless and universal curriculum and effectiveness tools to more than five million customers in fiscal 2005.

### Preferred Stock Recapitalization

On March 8, 2005, we completed a recapitalization transaction which resulted in substantial changes to the terms and rights of our Series A Preferred Stock. This transaction was designed to establish the foundation and flexibility for future actions which could create value for holders of our common stock. The recapitalization effectively bifurcated the outstanding Series A Preferred Stock into two separate securities: (1) new Series A Preferred Stock with revised terms and rights and (2) warrants to purchase shares of common stock at \$8.00 per share with an eight-year exercise period. In the recapitalization, we also amended the terms and rights of our Series B Preferred Stock to make it substantively identical to our Series A Preferred Stock except that it does not have common stock equivalent voting rights.

In connection with the recapitalization, we amended and restated our articles of incorporation to eliminate the convertibility of the Series A Preferred Stock and Series B Preferred Stock into common stock and to otherwise amend the designations, voting powers, preferences and relative, participating, optional and other special rights, qualifications, limitations and restrictions of the Series A Preferred Stock and the Series B Preferred Stock, and to make other miscellaneous changes to our articles of incorporation. Among other things, each share of Series A Preferred Stock will, immediately prior to any transfer to a transferee other than an affiliate, five percent equity holder, immediate family member or trust for the benefit of the transferring holder, convert automatically into one share of Series B Preferred Stock.

### Corporate Information

We were organized as a Utah corporation on December 2, 1983. Our principal executive offices are located at 2200 West Parkway Boulevard, Salt Lake City, Utah 84119. Our telephone number at that location is (801) 817-1776. Our website is located at [www.franklincovey.com](http://www.franklincovey.com). The information contained on our website is not part of this prospectus.

### The Offering

<i>Securities offered</i>	Up to 325,686 shares of common stock issuable upon exercise of our warrants.
<i>Use of proceeds</i>	The net proceeds, if any, from the exercise of the warrants will be used for working capital and general corporate purposes.
<i>Risk factors</i>	See "Risk Factors" and the other information included in this prospectus for a discussion of the factors you should consider carefully before deciding to invest in shares of our common stock.
<i>NYSE symbol for common stock</i>	FC

## RISK FACTORS

### ***Business Environment and Risk***

Our business environment, current domestic and international economic conditions, and other specific risks may affect our future business decisions and financial performance. The matters discussed below may cause our future results to differ from past results or those described in forward-looking statements and could have a material adverse effect on our business, financial condition, liquidity, results of operations, and stock price.

### ***We have experienced significant declines in sales and corresponding net losses in recent fiscal years and we may not be able to return to consistent profitability***

Although our sales increased in fiscal 2005 compared to fiscal 2004, we have experienced significant sales declines in prior years. Our sales during fiscal 2005 were \$283.5 million compared to \$275.4 million in fiscal 2004 and \$307.2 million in fiscal 2003. While our net income (before preferred dividends and recapitalization loss) has improved to \$10.2 million in fiscal 2005, declining sales have also had a corresponding adverse impact upon our operating results during prior fiscal years and we have reported net losses totaling \$10.2 million in fiscal 2004 and \$45.3 million in fiscal 2003. Our sales for the first quarter of fiscal 2006, which ended November 26, 2005, were \$72.4 million compared to \$69.1 million for the quarter ended November 27, 2004. Our net income improved to \$3.2 million for the quarter ended November 26, 2005 compared to \$1.5 million in the same quarter of the prior fiscal year. We continue to implement initiatives designed to increase our sales and improve our operating results, and have recognized significant improvements in recent years, however, we cannot assure you that we will return to consistently profitable operations.

In addition to declining sales, we have faced numerous challenges that have affected our operating results in recent years. Specifically, we have experienced, and may continue to experience, the following:

- Declining traffic in our retail stores and consumer direct channel
- Increased risk of excess and obsolete inventories
- Operating expenses that, as a percentage of sales, have exceeded our desired business model
- Costs associated with exiting unprofitable retail stores

### ***Our results of operations are materially affected by economic conditions, levels of business activity, and other changes experienced by our clients***

Uncertain economic conditions continue to affect many of our clients' businesses and their budgets for training, consulting, and related products. Such economic conditions and budgeted spending are influenced by a wide range of factors that are beyond our control and that we have no comparative advantage in forecasting. These conditions include:

- The overall demand for training, consulting, and our related products
- Conditions and trends in the training and consulting industry
- General economic and business conditions
- General political developments, such as the war on terrorism, and their impacts upon our business both domestically and internationally
- Natural disasters

In addition, our business tends to lag behind economic cycles and, consequently, the benefits of any economic recovery may take longer for us to realize than other segments of the economy. Future deterioration of economic conditions, particularly in the United States, could increase these effects on our business.

### ***We may not be able to compensate for lower sales or unexpected cash outlays with cost reductions significant enough to generate positive net income***

Although we have initiated cost-cutting efforts that have included headcount reductions, retail store closures, consolidation of administrative office space, and changes in our advertising and marketing strategy, if we are not able to prevent further revenue declines or achieve our growth objectives, we will need to further reduce our costs. An unintended consequence of additional cost reductions may be reduced sales. If we are not able to effectively reduce our costs and expenses commensurate with, or at the same pace as, any further deterioration in our sales, we may not be able to generate positive net income or cash flows from operations. Although we have experienced improved cash flows from operations during fiscal 2005 and 2004, an inability to maintain or continue to increase cash flows from operations may have an adverse impact upon our liquidity and ability to operate the business. For example, we may not be able to obtain additional financing or raise additional capital on terms that would be acceptable to us.

We are unable to predict the exact amount of cost reductions required for us to generate increased cash flows from operations because we cannot accurately predict the amount of our future sales. Our future sales performance depends, in part, on future economic and market conditions, which are not within our control.

***Our global operations pose complex management, foreign currency, legal, tax, and economic risks, which we may not adequately address***

We have company-owned offices in Australia, Brazil, Canada, Japan, Mexico, and the United Kingdom. We also have licensed operations in numerous other foreign countries. As a result of these foreign operations and their growing impact upon our results of operations, we are subject to a number of risks, including:

- Restrictions on the movement of cash
- Burdens of complying with a wide variety of national and local laws
- The absence in some jurisdictions of effective laws to protect our intellectual property rights
- Political instability
- Currency exchange rate fluctuations
- Longer payment cycles
- Price controls or restrictions on exchange of foreign currencies

While we are not currently aware of any of the foregoing conditions materially adversely affecting our operations, these conditions, which are outside of our control, could change at any time.

***We operate in a highly competitive industry***

The training and consulting industry is highly competitive with a relatively easy entry. Competitors continually introduce new programs and products that may compete directly with our offerings. Larger and better capitalized competitors may have enhanced abilities to compete for clients and skilled professionals. In addition, one or more of our competitors may develop and implement training courses or methodologies that may adversely affect our ability to sell our methodologies to new clients.

***Our profitability will suffer if we are not able to maintain our pricing and utilization rates and control our costs***

Our profit margin on training services is largely a function of the rates we are able to recover for our services and the utilization, or chargeability, of our trainers, client partners, and consultants. Accordingly, if we are unable to maintain sufficient pricing for our services or an appropriate utilization rate for our training professionals without corresponding cost reductions, our profit margin and overall profitability will suffer. The rates that we are able to recover for our services are affected by a number of factors, including:

- Our clients' perceptions of our ability to add value through our programs and products
- Competition
- General economic conditions
- Introduction of new programs or services by us or our competitors
- Our ability to accurately estimate, attain, and sustain engagement sales, margins, and cash flows over longer contract periods

Our utilization rates are also affected by a number of factors, including:

- Seasonal trends, primarily as a result of scheduled training
- Our ability to forecast demand for our products and services and thereby maintain an appropriate headcount in our employee base
- Our ability to manage attrition

Our profitability is also a function of our ability to control costs and improve our efficiency in the delivery of our products and services. Our cost-cutting initiatives, which focus on reducing both fixed and variable costs, may not be sufficient to deal with downward pressure on pricing or utilization rates. As we introduce new programs and seek to increase the number of our training professionals, we may not be able to manage a significantly larger and more diverse workforce, control our costs, or improve our efficiency.

***Our new training programs and products may not be widely accepted in the marketplace***

In an effort to improve our sales performance, we have made significant investments in new training and consulting offerings such as the *4 Disciplines of Execution*. Additionally, we have invested in our existing programs in order to refresh these programs and keep them relevant in the marketplace, including the newly revised *The 7 Habits of Highly Effective People* curriculum. We expect that these new programs, combined with new product offerings, will contribute to future growth in our revenue. Although we believe that our intellectual property is highly regarded in the marketplace, the demand for these new programs and products is still emerging. If our clients' demand for these new programs and products does not develop as we expect, or if our sales and marketing strategies for these programs are not effective, our financial results could be adversely impacted and we may need to change our business strategy.

***If we are unable to attract, retain, and motivate high-quality employees, we will not be able to compete effectively and will not be able to grow our business***

Due to our reliance on customer satisfaction, our overall success and ability to grow are dependent, in part, on our ability to hire, retain, and motivate sufficient numbers of talented people with the necessary skills needed to serve clients and grow our business. The inability to attract qualified employees in sufficient numbers to meet particular demands or the loss of a significant number of our employees could have a serious adverse effect on us, including our ability to obtain and successfully complete important client engagements and thus maintain or increase our sales.

We continue to offer a variable component of compensation, the payment of which is dependent upon our sales performance and profitability. We adjust our compensation levels and have adopted different methods of compensation in order to attract and retain appropriate numbers of employees with the necessary skills to serve our clients and grow our business. We may also use equity-based performance incentives as a component of our executives' compensation, which may affect amounts of cash compensation. Variations in any of these areas of compensation may adversely impact our operating performance.

***We may experience foreign currency gains and losses***

We conduct a portion of our business in currencies other than the United States dollar. As our international operations continue to grow and become a larger component of our financial results, our revenues and operating results may be adversely affected when the dollar strengthens relative to other currencies and are positively affected when the dollar weakens. In order to manage a portion of our foreign currency risk, we make limited use of foreign currency derivative contracts to hedge certain transactions and translation exposure. There can be no guarantee that our foreign currency risk management strategy will be effective in reducing the risks associated with foreign currency transactions and translation.

***Our product sales may continue to decline and result in changes to our profitability***

In recent years, our product sales have declined. These product sales, which are primarily delivered through our retail stores, consumer direct channels (catalog call center and eCommerce), wholesale, and government product channels have historically been very profitable for us. However, due to recent declines, we have reevaluated our product business and have taken steps to restore its profitability. These initiatives have included hiring an additional sales force based at certain retail stores, retail store closures, transitioning catalog customers to our eCommerce site, outsourcing our government products channel, and increasing our business through wholesale channels. However, these initiatives may also result in decreased gross margins on our product sales if lower-margin wholesale sales continue to increase. If product sales continue to decline or gross margins decline, our product sales strategies may not be adequate to return our product delivery channels to past profitability levels.

***Our strategy of outsourcing certain functions and operations may fail to reduce our costs for these services***

We have an outsourcing contract with Electronic Data Systems (EDS) to provide warehousing, distribution, information systems, and call center operations. Under terms of the outsourcing contract and its addendums, EDS operates our company's primary call center, provides warehousing and distribution services, and supports our company's various information systems. Certain components of the outsourcing agreement contain minimum activity levels that we must meet or we will be required to pay penalty charges. If these activity levels are not achieved, we may not realize anticipated benefits from the EDS outsourcing agreement in these areas.

Our outsourcing contracts with EDS contain early termination provisions that we may exercise under certain conditions. However, in order to exercise the early termination provisions, we would have to pay specified penalties to EDS depending upon the circumstances of the contract termination.

***We have significant intangible asset balances that may be impaired if cash flows from related activities decline***

At November 26, 2005, we had \$82.2 million of intangible assets, which were primarily generated from the fiscal 1997 merger with the Covey Leadership Center. These intangible assets are evaluated for impairment based upon cash flows (definite-lived intangible assets) and estimated royalties from revenue streams (indefinite-lived intangible assets). Although our current sales and cash flows are sufficient to support these intangibles, if our sales and corresponding cash flows decline, we may be faced with significant asset impairment charges.

***Our sales are subject to changes in consumer preferences and buying trends***

Our product sales are subject to changing consumer preferences and difficulties in anticipating or forecasting these changes may result in adverse consequences to our sales. Although we continue to have a substantial loyal customer base for many of our existing products, changes in consumer preferences, such as a shift in demand from paper-based planners to handheld electronic devices or other technology products, may have an adverse impact upon our sales. While we have experienced stabilizing sales in our core products (paper-based planners, binders, and accessories) during fiscal 2005, we are still subject to consumer preferences for these products.

***Our future quarterly operating results are subject to factors that can cause fluctuations in our stock price***

Historically, our stock price has experienced significant volatility. We expect that our stock price may continue to experience volatility in the future due to a variety of potential factors that may include the following:

- Fluctuations in our quarterly results of operations and cash flows
- Variations between our actual financial results and market expectations
- Changes in our key balances, such as cash and cash equivalents
- Currency exchange rate fluctuations
- Unexpected asset impairment charges
- No analyst coverage

In addition, the stock market has experienced substantial price and volume fluctuations over the past several quarters that has had some impact upon our stock and other stock issues in the market. These factors, as well as general investor concerns regarding the credibility of corporate financial statements and the accounting profession, may have a material adverse effect upon our stock in the future.

***We may need additional capital in the future, and this capital may not be available to us on favorable terms***

We may need to raise additional funds through public or private debt offerings or equity financings in order to:

- Develop new services, programs, or products
- Take advantage of opportunities, including expansion of the business
- Respond to competitive pressures

We may be unable to obtain the necessary capital on terms or conditions that are favorable to us.

***We are the creditor for a management common stock loan program that may not be fully collectible***

We are the creditor for a loan program that provided the capital to allow certain management personnel the opportunity to purchase shares of our common stock. For further information regarding our management common stock loan program, refer to Note 11 to our August 31, 2005 consolidated financials statements. The inability of our company to collect all, or a portion, of these receivables could have an adverse impact upon our financial position and future cash flows compared to full collection of the loans.



***We may have exposure to additional tax liabilities***

As a multinational company, we are subject to income taxes as well as non-income based taxes, in both the United States and various foreign tax jurisdictions. Significant judgment is required in determining our worldwide provision for income taxes and other tax liabilities. In the normal course of a global business, there are many intercompany transactions and calculations where the ultimate tax determination is uncertain. As a result, we are regularly under audit by tax authorities. Although we believe that our tax estimates are reasonable, we cannot assure you that the final determination of tax audits will not be different from what is reflected in our historical income tax provisions and accruals.

We are also subject to non-income taxes, such as payroll, sales, use, valued-added, and property taxes in both the United States and various foreign jurisdictions. We are regularly under audit by tax authorities with respect to these non-income taxes and may have exposure to additional non-income tax liabilities.

***We may be exposed to potential risks relating to internal controls procedures and our ability to have those controls attested to by our independent auditors***

While we believe that we can comply with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002, our failure to document, implement, and comply with these requirements may harm our reputation and the market price of our stock could suffer. We may be exposed to risks from recent legislation requiring companies to evaluate their internal controls and have those controls attested to by their independent auditors. We are evaluating our internal control systems in order to allow our management to report on, and our independent auditors attest to, our internal controls, as a required part of our Annual Report on Form 10-K beginning with our report for the fiscal year ended August 31, 2006.

At present, there is little precedent available with which to measure compliance adequacy. In the event we identify significant deficiencies or material weaknesses in our internal controls that we cannot remediate in a timely manner, our reputation, financial results, and market price of our stock could suffer.

***We may elect to use our cash to redeem shares of preferred stock, which may decrease our ability to respond to adverse changes***

Our outstanding preferred stock bears a cumulative dividend equal to 10 percent per annum. During fiscal 2005, we utilized a portion of the proceeds from the sale of our corporate headquarters to redeem \$30.0 million of our preferred stock. Subsequent to August 31, 2005, we redeemed an additional \$10.0 million of preferred stock and amended the terms of our preferred stock recapitalization that was completed in fiscal 2005 to extend the period during which we can redeem preferred stock at an amount equal to the liquidation preference. We anticipate that we may redeem additional shares of preferred stock in the future to the extent that we believe sufficient cash is available to do so. Any such redemptions will reduce our cash on hand and may reduce our ability to adequately respond to any future adverse changes in our business and operations, whether anticipated or unanticipated.

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus contains forward-looking statements. These forward-looking statements are based on our current expectations, estimates and projections about our industry, management's beliefs and certain assumptions made by us. Words such as "anticipate," "expect," "intend," "plan," "believe," "seek," "estimate," "predict," "continue," "will" and "may" and variations of these words or similar expressions are intended to identify forward-looking statements. These statements reflect the views of our management at the time they are made based on information currently available to management. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict. Therefore, our actual results could differ materially from those expressed or forecasted in any forward-looking statements as a result of a variety of factors, including those set forth in "Risk Factors" above and elsewhere in this prospectus. Except as required by law, we undertake no obligation to update publicly any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

## USE OF PROCEEDS

In the event of full cash exercise of all warrants, we estimate that the net proceeds to us would be approximately \$2,605,488 (exclusive of related expenses). The actual exercise of any of these securities, however, is beyond our control and depends on a number of factors, including the market price of our common stock. There can be no assurance that any of the warrants will be exercised.

Additionally, upon exercise of a warrant, holders may choose, or we may elect to require, any warrant exercise to be a net exercise in which the exercising holder would receive fewer shares of common stock, depending on the fair market value of the common stock at the time of exercise, than otherwise could be received upon an exercise for cash. We would receive no proceeds from any net exercise. Further, we, at our election, may choose, in the place of issuing any shares of common stock to such holder, to pay to any holder completing a net exercise of a warrant a cash amount equal to the fair market value of the shares of common stock that otherwise would be issuable to such holder in connection with such net exercise as opposed to issuing shares of common stock to the exercising holder. In this case, not only would we not receive any proceeds, but we would pay out cash to avoid issuing additional shares.

The net proceeds, if any, from the exercise of the warrants will be used for working capital and general corporate purposes. We will not receive any proceeds from the sale of any of the common stock issuable upon the exercise of the warrants.

## PLAN OF DISTRIBUTION

We are offering shares of common stock issuable upon the exercise of the warrants issued in connection with a recapitalization of our company. Such warrants may be exercised by surrendering a duly executed Notice of Exercise and the warrant certificate, together with payment of the exercise price, to our principal office before 5:00 p.m. on the expiration date defined therein. If less than all of the warrants evidenced by a warrant certificate are exercised, a new warrant certificate will be issued for the remaining number of warrants.

## DESCRIPTION OF CAPITAL STOCK

The common stock registered by this prospectus is of the same class as other of our securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended.

## LEGAL MATTERS

The validity under the Utah Revised Business Corporation Act of the common stock offered by this prospectus has been passed on for us by Dorsey & Whitney LLP, Salt Lake City, Utah.

## EXPERTS

The consolidated financial statements and financial statement schedule of Franklin Covey Co. as of August 31, 2005 and 2004 and for each of the years in the three-year period ended August 31, 2005 have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The audit reports indicate that the consolidated financial statements as of August 31, 2004 and for each of the years ended August 31, 2004 and 2003 have been restated.

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission. You may read and copy any document we file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. Our SEC filings are also available to the public at the SEC's web site at <http://www.sec.gov>. In addition, we maintain an Internet website at [www.franklincovey.com](http://www.franklincovey.com). We do not intend that our website be a part of this prospectus.

We incorporate information into this prospectus by reference, which means that we disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus, except for any such information superseded by information contained in later-filed documents or directly in this prospectus. This prospectus incorporates by reference the documents set forth below that we have previously filed with the SEC. These documents contain important information about us and our financial condition:

- (1) Annual Report on Form 10-K for the year ended August 31, 2005, filed November 29, 2005;
- (2) Quarterly Report on Form 10-Q for the quarter ended November 26, 2005, filed January 10, 2006;
- (3) Current Reports on Form 8-K, filed January 24, 2006 and January 26, 2006; and
- (4) The description of our common stock contained in the Registration Statement on Form 8-A filed under the Securities Exchange Act of 1934, including any amendment or report filed under the Exchange Act of 1934, for the purpose of updating such description.

We also incorporate all documents we subsequently file with the SEC pursuant to Section 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, after the date of this prospectus and prior to the termination of this offering (except for information furnished under Items 2.02 or 7.01 of our current reports on Form 8-K). The information in these documents will update and supersede the information in this prospectus.

We will provide at no cost to each person to whom this prospectus is delivered, including any beneficial owner, upon written or oral request, a copy of any or all of the information that has been incorporated by reference in this prospectus but not delivered with this prospectus. Investors should direct requests to Richard Putnam, Franklin Covey Co., 2200 West Parkway Boulevard, Salt Lake City, Utah 84119, telephone: (801) 817-1776.

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**FRANKLIN COVEY CO.**

**325,686**

**SHARES OF COMMON STOCK**

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**PROSPECTUS**

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**, 2006**

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## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The Registrant will pay all reasonable expenses incident to the registration of the securities. Such expenses are set forth in the following table. All of the amounts shown are estimates except the SEC registration fee.

SEC registration fee	\$	279
Legal fees	\$	10,000
Accounting fees and expenses	\$	5,000
Printing and other expenses	\$	<u>100</u>
Total	\$	<u><u>15,379</u></u>

#### ITEM 15. INDEMNIFICATION OF OFFICERS AND DIRECTORS

Section 16-10a-902 of the Utah Revised Business Corporation Act (the "Revised Act") provides that a corporation may indemnify any individual made a party to a proceeding because he is or was a director, against liability incurred in the proceeding, if: (a) his conduct was in good faith, (b) he reasonably believed that his conduct was in, or not opposed to, the corporation's best interests; and (c) in the case of any criminal proceeding, he had no reasonable cause to believe such conduct was unlawful; provided, however, that a corporation may not indemnify a director under Section 16-10a-902 if (i) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation, or (ii) in connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in his or her official capacity, in which proceeding he was adjudged liable on the basis that he derived an improper benefit.

Section 16-10a-903 of the Revised Act provides that, unless limited by its articles of incorporation, a corporation shall indemnify a director who was successful, on the merits or otherwise, in the defense of any proceeding, or in the defense of any claim, issue or matter in the proceeding, to which he was a party because he is or was a director of the corporation, against reasonable expenses incurred in connection with the proceeding or claim with respect to which he has been successful.

In addition to the indemnification provided by Sections 902 and 903, Section 16-10a-905 of the Revised Act provides that, unless otherwise limited by a corporation's articles of incorporation, a director may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction.

Section 16-10a-904 of the Revised Act provides that a corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of the final disposition of the proceeding upon the satisfaction of certain conditions.

Section 16-10a-907 of the Revised Act provides that, unless a corporation's articles of incorporation provide otherwise, (i) an officer of the corporation is entitled to mandatory indemnification under Section 903 and is entitled to apply for court-ordered indemnification under Section 905, in each case to the same extent as a director, (ii) the corporation may indemnify and advance expenses to an officer, employee, fiduciary or agent of the corporation to the same extent as a director, and (iii) a corporation may also indemnify and advance expenses to an officer, employee, fiduciary or agent who is not a director to a greater extent, if not inconsistent with public policy, and if provided for by its articles of incorporation, bylaws, general or specific action of its board of directors or contract.

Section 16-10a-908 of the Revised Act provides that a corporation may purchase and maintain liability insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the corporation or who, while serving as a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic corporation or other person, or of an employee benefit plan against liability asserted against or incurred by the individual in that capacity or arising from his status as such, whether or not the corporation would have the power to indemnify him against the same liability under Section 902, 903, or 907 of the Revised Act.

Section 16-10a-909 of the Revised Act provides that a provision treating a corporation's indemnification of, or advance for expenses to, directors that is contained in its articles of incorporation or bylaws, in a resolution of its shareholders or board of directors or in a contract (except an insurance policy), or otherwise, is valid only if and to the extent the provision is not inconsistent with Sections 901 through 909 of the Revised Act. If the articles of incorporation limit indemnification or advancement of expenses, indemnification and advancement of expenses are valid only to the extent not inconsistent with the articles.

Our bylaws, as amended and restated, provide that we shall, to the fullest extent permitted, and in the manner required by the laws of the State of Utah, indemnify an individual made, or threatened to be made a party to a proceeding because he or she is or was a director, officer, employee or agent of us or of another enterprise at our request.

Our articles of incorporation provide that to the fullest extent permitted by the Revised Act, no director shall be liable to us or our shareholders for monetary damages. In addition, we are authorized to indemnify our directors and officers to the fullest extent permitted under applicable law.

Indemnification may be granted pursuant to any other agreement, bylaw, or vote of shareholders or directors. In addition to the foregoing, we maintain insurance from commercial carriers against certain liabilities which may be incurred by our directors and officers.

The foregoing description is necessarily general and does not describe all details regarding the indemnification of our officers, directors or controlling persons.

#### ITEM 16. EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
4.1	Specimen Certificate of the Registrant's common stock, par value \$0.05 per share (incorporated by reference to Amendment No. 1 to Registration Statement on Form S-1 filed with the Commission on May 26, 1992, Registration No. 33-47283).
4.2	Articles of Restatement filed January 30, 2006 amending and restating the Registrant's Articles of Incorporation.
4.3	Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registration Statement on Form S-1 filed with the Commission on April 17, 1992, Registration No. 33-47283).
5.1	Opinion of Dorsey & Whitney LLP.
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Dorsey & Whitney LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included in signature page).

#### ITEM 17. UNDERTAKINGS

The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales of securities are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnifications for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

## SIGNATURE

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Salt Lake City, State of Utah, on February 2, 2006.

### FRANKLIN COVEY CO.

By: /s/ ROBERT A. WHITMAN

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Robert A. Whitman  
President and Chief Executive Officer

## POWER OF ATTORNEY

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated. Each person whose signature to this Registration Statement appears below hereby constitutes and appoints Robert A. Whitman and Stephen D. Young, and each of them, as his true and lawful attorney-in-fact and agent, with full power of substitution, to sign on his behalf individually and in the capacity stated below and to perform any acts necessary to be done in order to file all amendments and post-effective amendments to this Registration Statement, and any and all instruments or documents filed as part of or in connection with this Registration Statement or the amendments thereto and each of the undersigned does hereby ratify and confirm all that said attorney-in-fact and agent, or his substitutes, shall do or cause to be done by virtue hereof.

Signature	Title	Date
<u>/s/ ROBERT A. WHITMAN</u> Robert A. Whitman	Chairman of the Board of Directors, President and Chief Executive Officer (Principal Executive Officer)	February 2, 2006
<u>/s/ STEPHEN D. YOUNG</u> Stephen D. Young	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 2, 2006
<u>/s/ CLAYTON M. CHRISTENSEN</u> Clayton M. Christensen	Director	February 2, 2006
<u>/s/ STEPHEN R. COVEY</u> Stephen R. Covey	Director	February 2, 2006
<u>/s/ ROBERT H. DAINES</u> Robert H. Daines	Director	February 2, 2006
<u>/s/ E. J. "JAKE" GARN</u> E. J. "Jake" Garn	Director	February 2, 2006
<u>/s/ DENNIS G. HEINER</u> Dennis G. Heiner	Director	February 2, 2006
<u>/s/ DONALD J. MCNAMARA</u> Donald J. McNamara	Director	February 2, 2006
<u>/s/ JOEL C. PETERSON</u> Joel C. Peterson	Director	February 2, 2006
<u>/s/ E. KAY STEPP</u> E. Kay Stepp	Director	February 2, 2006



## EXHIBIT INDEX

<b>Exhibit No.</b>	<b>Description</b>
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5.1	Opinion of Dorsey & Whitney LLP.
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Dorsey & Whitney LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included in signature page).

February 2, 2006

Franklin Covey Co.  
2200 West Parkway Boulevard  
Salt Lake City, Utah 84119

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special counsel to Franklin Covey Co., a Utah corporation (the "Company"), in connection with a Registration Statement on Form S-3, together with any subsequent amendments thereto (the "Registration Statement"), relating to the sale of up to 325,686 shares of the Company's common stock, \$0.05 par value per share (the "Shares"), issuable upon the exercise of certain warrants. The Shares are to be sold from time to time as set forth in the Registration Statement.

We have examined such documents, and have reviewed such questions of law, as we have considered necessary and appropriate for the purposes of our opinion set forth below. In rendering our opinion, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies. We have also assumed the legal capacity for all purposes relevant hereto of all natural persons and, with respect to all parties to agreements or instruments relevant hereto other than the Company, that such parties had the requisite power and authority (corporate or otherwise) to execute, deliver and perform such agreements or instruments, that such agreements or instruments have been duly authorized by all requisite action (corporate or otherwise), executed and delivered by such parties and that such agreements or instruments are the valid, binding and enforceable obligations of such parties. As to questions of fact material to our opinion, we have relied upon certificates of officers of the Company and of public officials.

Based on the foregoing, we are of the opinion that if, as and when the Shares are issued, such Shares will be duly authorized by all requisite corporate action and will be validly issued, fully paid and nonassessable.

Our opinion expressed above is limited to the laws of the State of Utah.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement, and to the reference to our firm under the caption "Legal Matters" contained in the prospectus included therein.

Very truly yours,

/s/ DORSEY & WHITNEY LLP

NST/SPG

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors of Franklin Covey Co.:

We consent to the use of our reports dated November 23, 2005, with respect to the consolidated balance sheets of Franklin Covey Co. as of August 31, 2005 and 2004, and the related consolidated statements of operations and comprehensive income (loss), shareholders' equity, and cash flows for each of the years in the three-year period ended August 31, 2005 and the related financial statement schedule, incorporated herein by reference and to the reference to our firm under the heading "Experts" in the prospectus.

Our reports dated November 23, 2005, indicate that the consolidated financial statements as of August 31, 2004 and for each of the years ended August 31, 2004 and 2003 have been restated.

/s/ KPMG LLP

Salt Lake City, Utah  
February 2, 2006

**ARTICLES OF RESTATEMENT  
OF  
FRANKLIN COVEY CO.**

In accordance with Section 16-10a-1007 of the Utah Revised Business Corporation Act (the "Act"), Franklin Covey Co., a Utah corporation (the "Company"), hereby certifies as follows:

1. The name of the corporation is Franklin Covey Co.
2. The text of the Amended and Restated Articles of Incorporation (the "Restated Articles"), amending and restating the Company's prior Amended and Restated Articles of Incorporation, is attached hereto as Exhibit A and is incorporated herein by this reference. The Restated Articles supersede the original Articles of Incorporation of the Company and all prior amendments and restatements thereto.
3. The Restated Articles were adopted by the Company's Board of Directors on November 10, 2005 and the shareholders at the annual meeting of the shareholders held January 20, 2006 (the "Shareholders' Meeting"), in accordance with the requirements of the Act.
4. With respect to the approval of the Restated Articles, the number of outstanding shares of common stock, par value \$0.05 per share (the "Common Stock"), including all outstanding shares of Series A Preferred Stock calculated on an as-converted into Common Stock basis, as of November 25, 2005, the record date for the Shareholders' Meeting (the "Record Date"), was 24,532,287 (collectively, the "Common Equivalent Shares"), the number of Common Equivalent Shares entitled to vote at the Shareholder's Meeting as a voting group was 24,532,287 and the number of Common Equivalent Shares indisputably represented at the meeting was 20,332,329. The number of outstanding shares of Common Stock, excluding all outstanding shares of Series A Preferred Stock on an as-converted basis, as of the Record Date was 20,744,725, the number of such shares of Common Stock entitled to vote at the Shareholders' Meeting as a voting group was 20,744,725 and the number of such shares indisputably represented at the meeting was 16,564,983. The number of outstanding shares of Series A Preferred Stock as of the Record Date was 1,893,781, the number of such shares of Series A Preferred Stock entitled to vote at the Shareholders' Meeting as a voting group was 1,893,781 and the number of shares or Series A Preferred Stock indisputably represented at the meeting was 1,883,673. Each share of Series A Preferred Stock is entitled to two votes of Common Stock. There were no outstanding shares of Series B Preferred Stock as of the Record Date and no shares of Series B Preferred Stock were entitled to vote at the Shareholders' Meeting as a voting group.
5. For each voting group, the following numbers of votes were cast in favor of approving the Restated Articles: (i) 8,665,042 Common Equivalent Shares, (ii) 5,175,110 shares of Common Stock and (iii) 3,489,932 shares of Series A Preferred Stock. For each voting group, the number of votes cast in favor of the Restated Articles was sufficient for approval by such voting group.

IN WITNESS WHEREOF, these Articles of Restatement have been executed on behalf of the Company as of this 20<sup>th</sup> day of January, 2006.

FRANKLIN COVEY CO.

/s/ ROBERT A. WHITMAN  
Robert A. Whitman  
Chief Executive Officer

**EXHIBIT A**  
**AMENDED AND RESTATED ARTICLES**  
**OF INCORPORATION**  
**OF FRANKLIN COVEY CO.**

**ARTICLE I**

The name of the corporation is Franklin Covey Co. (the "Company").

**ARTICLE II**

The duration of the Company is perpetual.

**ARTICLE III**

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the Utah Revised Business Corporation Act, as amended (the "Act").

**ARTICLE IV**

The Company is authorized to issue two classes of stock, which shall be designated, respectively, as common stock, par value \$0.05 per share ("Common Stock"), and preferred stock, no par value ("Preferred Stock"). The total number of shares of capital stock that the Company shall have authority to issue is 54,000,000, consisting of 40,000,000 shares of Common Stock, and 14,000,000 shares of Preferred Stock.

The designation, powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of each class of stock, and the express grant of authority to the Board of Directors to fix by resolution the designation, powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of each share of Preferred Stock which are not fixed by these Amended and Restated Articles of Incorporation, are as follows:

A. Common Stock.

1. Dividends.

Subject to the rights of the holders of Preferred Stock, and subject to any other provisions of the Articles of Incorporation, holders of Common Stock shall be entitled to receive such dividends and other distributions in cash, stock or property of the Company as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Company legally available therefor.

2. Liquidation; Dissolution.

In the event of any liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Company and after payment or provision for payment to the holders of each series of Preferred Stock of all amounts required in accordance with Section B.3 of this Article IV, the remaining assets and funds of the Company shall be divided among and paid to the holders of Common Stock.

3. Voting.

(a) At every meeting of the stockholders every holder of Common Stock shall be entitled to one vote in person or by proxy for each share of such Stock standing in his name on the stock transfer records of the Company.

(b) No shareholder shall have the right to cumulate votes in the election of directors.

4. Preemptive Rights.

No holder of shares of Common Stock of the Company shall, as such holder, be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or of bonds, debentures or other securities convertible into or exchangeable for stock, but all such additional shares of stock of any class, or bonds, debentures or other securities convertible into or exchangeable for stock, may be issued and disposed of by the Board of Directors on such terms and for such consideration, so far as may be permitted by law, and to such persons, as the Board of Directors in its absolute discretion may deem advisable.

B. Preferred Stock.

1. Number; Series.

The Preferred Stock may be issued in one or more series, from time to time, with each such series to have such designation, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof, as shall be stated and expressed in Section C of this

Article IV or in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Company, subject to the limitations prescribed by law and in accordance with the provisions hereof, the Board of Directors being hereby expressly vested with authority to adopt any such resolution or resolutions. The authority of the Board of Directors with respect to each such series shall include, but not be limited to, the determination or fixing of the following:

- (a) The distinctive designation and number of shares comprising such series, which number may (except where otherwise provided by the Board of Directors in creating such series) be increased or decreased (but not below the number of shares then outstanding) from time to time by like action of the Board of Directors;
- (b) The dividend rate of such series, the conditions and times upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes of stock or series thereof, or on the other series of the same class, and whether dividends shall be cumulative or noncumulative;
- (c) The conditions upon which the shares of such series shall be subject to redemption by the Company and the times, prices and other terms and provisions upon which the shares of the series may be redeemed;
- (d) Whether or not the shares of the series shall be subject to the operation of retirement or sinking fund provisions to be applied to the purchase or redemption of such shares and, if such retirement or sinking fund be established, the annual amount thereof and the terms and provisions relative to the operation thereof;
- (e) Whether or not the shares of the series shall be convertible into or exchangeable for shares of any other class or classes, with or without par value, or of any other series of the same class and, if provision is made for conversion or exchange, the times, prices, rates, adjustments, and other terms and conditions of such conversion or exchange;
- (f) Whether or not the shares of the series shall have voting rights, in addition to the voting rights provided by law, and, if so, subject to the limitations hereinafter set forth, the terms of such voting rights;
- (g) The rights of the shares of the series in the event of voluntary or involuntary liquidation, dissolution, or upon distribution of assets of the Company; and
- (h) Any other powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the shares of such series, as the Board of Directors may deem advisable and as shall not be inconsistent with the provisions of these Articles of Incorporation.

2. Dividends.

The holders of the shares of Preferred Stock of each series shall be entitled to receive, when and as declared by the Board of Directors, out of the funds legally available for the payment of dividends, dividends at the rate fixed by the Board of Directors for such series for the current period and, if cumulative, for all prior periods for which such dividends are cumulative, and no more, before any dividends, other than dividends payable in Common Stock, shall be declared and paid, or set apart for payment, on the Common Stock with respect to the same dividend period.

Whenever, at any time, dividends on the then outstanding Preferred Stock as may be required with respect to any series outstanding shall have been paid or declared and set apart for payment on the then outstanding Preferred Stock, and after complying with respect to any retirement or sinking fund or funds for all applicable series of Preferred Stock, the Board of Directors may, subject to the provisions of Section C of this Article IV or the resolution or resolutions creating the series of Preferred Stock, declare and pay dividends on the Common stock as provided in Section A.1 of this Article IV, and the holders of shares of Preferred Stock shall not be entitled to share therein, except as otherwise provided in the resolution or resolutions creating any series.

3. Liquidation; Dissolution.

The holders of the Preferred Stock of each series shall be entitled upon liquidation or dissolution of the Company to such preferences as are provided in Section C of this Article IV or the resolution or resolutions creating such series of Preferred Stock, and no more, before any distribution of the assets of the Company shall be made to the holders of shares of the Common Stock. Whenever the holders of shares of the Preferred Stock shall have been paid the full amounts to which they shall be entitled, the holders of shares of the Common Stock shall be entitled to share in all assets of the Company remaining as provided in Section A.2 of this Article IV. If, upon such liquidation, dissolution or winding up, the assets of the Company distributable as aforesaid among the holders of the Preferred Stock is insufficient to permit the payment to them of said preferential amounts, then such assets shall be distributed ratably among such holders in proportion to the respective total amounts which they shall be entitled to receive as provided in this Section B.3.

4. Voting.

Except as otherwise provided by a resolution or resolutions of the Board of Directors creating any series of Preferred Stock or by the Act, the Common Stock issued and outstanding shall have and possess the exclusive power to vote for the election of directors and for all other purposes as provided in Section A.3 of this Article IV.

5. Preemptive Rights.

Except as may be provided in the resolution or resolutions of the Board of Directors providing for the issue of any series of Preferred Stock, no holder of shares of the Preferred Stock of the Company shall, as such holder, be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or of bonds, debentures or other securities convertible into or exchangeable for stock, but all such additional shares of stock of any class, or bonds, debentures or other securities convertible into or exchangeable for stock, may be issued

and disposed of by the Board of Directors on such terms and for such consideration, so far as may be permitted by laws, and to such persons, as the Board of Directors in its absolute discretion may deem advisable.

C. Series A and Series B Preferred Stock.

1. Certain Defined Terms, Etc.

In addition to the terms defined elsewhere herein, certain terms used in this Article IV.C with initial capital letters have the meanings given to them in Section 11. References in this Article IV.C to Sections are, unless otherwise stated, references to Sections of this Article IV.C.

2. Designation.

(a) 4,000,000 shares of Preferred Stock of the Company are designated as “Series A Preferred Stock” having the powers, preferences and relative participating, optional and other special rights and the qualifications, limitations or restrictions thereof as set forth in this Article IV.C (the “Series A Preferred”).

Effective as of the date these Restated Articles are duly filed with the Utah Department of Commerce, Division of Corporations and Commercial Code (the “Effective Date”), each share of Series A Preferred issued and outstanding immediately prior to the Effective Date (the “Old Series A Stock”) shall automatically and without any action on the part of the holder thereof be split, reclassified, changed and converted into four shares of Series A Preferred (the “New Series A Stock”). The foregoing forward stock split shall be subject to the treatment of fractional share interests as described below.

Each holder of a certificate or certificates, which immediately prior to the Effective Date represented outstanding shares of Old Series A Stock (the “Old Series A Certificates”), shall be entitled to receive, as soon as reasonably practicable following the surrender of such Old Series A Certificates to the Company or the Company’s transfer agent for cancellation, a new certificate or certificates (the “New Series A Certificates”) representing that number of whole shares of the New Series A Stock into which and for which the shares of the Old Series A Stock, formerly represented by such Old Series A Certificates so surrendered, are reclassified under the terms hereof. Each New Series A Certificate issued by the Company shall bear the legend required by Section 8(b)(iii).

From and after the Effective Date, and until such certificates are surrendered, the Old Series A Certificates shall be deemed for all corporate purposes to evidence ownership of that number of whole shares of the New Series A Stock into which and for which the shares of the Old Series A Stock have been reclassified under the terms hereof. No certificates or scrip representing fractional share interests in New Series A Stock will be issued, and no such fractional share interest will entitle the holder thereof to vote, or to any rights of a stockholder of the Company. A holder of Old Series A Certificates shall receive, as soon as reasonably practicable following the surrender of such certificates, in lieu of any fraction of a share of New Series A Stock to which the holder would otherwise be entitled, a cash payment therefor. Such cash payment will equal the fraction to which the stockholder would otherwise be entitled multiplied by \$25.00. If more than one Old Series A Certificate shall be surrendered at one time for the account of the same stockholder, the number of full shares of New Series A Stock for which New Series A Certificates shall be issued shall be computed on the basis of the aggregate number of shares of New Series A Stock represented by the Old Series A Certificates so surrendered. In the event that the Company or the Company’s transfer agent determines that a holder of Old Series A Certificates has not tendered all such certificates for exchange, the Company or the Company’s transfer agent shall carry forward any fractional share of New Series A Stock until all Old Series A Certificates held by such holder have been presented for exchange such that payment for fractional shares to any one person shall not exceed the value of one share of New Series A Stock held by such person. All references elsewhere in these Restated Articles to the “Series A Preferred” shall, after the Effective Date, refer to the New Series A Stock.

(b) 4,000,000 shares of Preferred Stock of the Company are designated as “Series B Preferred Stock” having the powers, preferences and relative participating, optional and other special rights and the qualifications, limitations or restrictions thereof as set forth in this Article IV.C (the “Series B Preferred”). The Series A Preferred and the Series B Preferred are together referred to herein as the “Senior Preferred.”

3. Dividends and Distributions.

(a) The holders of shares of Senior Preferred, if any, and in preference to the holders of Common Stock, and of any other class or series of Preferred Stock or other capital stock of the Company (together with the Common Stock, “Junior Stock”), will be entitled to receive dividends at an annual rate of \$2.50 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) (such dividends, “Regular Dividends”), payable quarterly in arrears on the 15th day of each of March, June, September and December of each year or such other dates as are the 15th day of the month following the end of each of the Company’s fiscal quarters (except that if any such date is a Saturday, Sunday or legal holiday, then such dividend will be payable on the next day that is not a legal holiday) (the “Dividend Payment Date”), commencing, with respect to each share of Senior Preferred, on the first date on which such share of Senior Preferred is issued (the “Initial Issuance Date”) to such holders, prior and in preference to any declaration or payment of any dividend on any Junior Stock; provided that dividends on shares of Series B Preferred issued upon conversion of shares of Series A Preferred will commence on the Initial Issuance Date of the shares of Series A Preferred that are converted into such shares of Series B Preferred. Regular Dividends will be cumulative and accrue with respect to each outstanding share of Senior Preferred from the date dividends commence on such share (the “Dividend Commencement Date”), whether or not declared by the Board and whether or not there are funds of the Company legally available for payment of such dividends. No accrued or accumulated dividends on the Senior Preferred will bear interest.

(b) Each Regular Dividend will be payable to holders of record as they appear on the stock books of the Company on the last day of each fiscal quarter of the Company.

4. Voting Rights.

(a) In addition to the rights provided in Sections 4(b), 4(c) and 4(d), holders of record of Series A Preferred (the “Series A Holders”) will have the right to vote or consent in writing together with the Common Stock on all matters presented to the holders of Common Stock as set forth in Section 4(e). Apart from the rights provided in Sections 4(b), 4(c) and 4(d), holders of record of Series B Preferred (the “Series B Holders”) will have no voting rights.

(b) In addition to the voting rights provided by Sections 4(a), 4(c) and 4(d), as long as any shares of Senior Preferred are outstanding, the affirmative vote or consent of the holders of a majority of the then-outstanding shares of Senior Preferred, voting as a separate voting group, will be required in order for the Company to:

- (i) amend, alter or repeal, whether by merger, consolidation or otherwise, the terms of this Article IV.C or any other provision of the Restated Articles, in any way that adversely affects any of the powers, designations, preferences and relative, participating, optional and other special rights of the Senior Preferred, and the qualifications, limitations or restrictions thereof;
- (ii) issue any shares of capital stock ranking prior or superior to, or on parity with, the Senior Preferred with respect to dividends or other distributions or upon liquidation, dissolution or winding up of the Company, or issue any Junior Stock other than Common Stock;
- (iii) subdivide or otherwise change shares of Senior Preferred into a different number of shares whether in a merger, consolidation, combination, recapitalization, reorganization or otherwise; or
- (iv) issue any shares of Senior Preferred other than in accordance with this Article IV.C.

(c) In addition to the voting rights provided by Sections 4(a), 4(b) and 4(d), the affirmative vote or consent of the holders of a majority of the then-outstanding shares of Senior Preferred, voting as a separate voting group, will be required for the Company to declare or pay any dividends or other distributions on or in respect of Junior Stock (a “Junior Stock Dividend”); provided, however, that such affirmative vote or consent of the holder of Senior Preferred shall not be required for any proposed Junior Stock Dividend if (i) the Company has paid all Regular Dividends for all fiscal quarters preceding the fiscal quarter in which the Company proposes to pay such Junior Stock Dividend and (ii) the Company has reserved sufficient funds to pay the Regular Dividend that will become payable for such fiscal quarter in which the Company proposes to pay a Junior Stock Dividend in accordance with Section 3.

(d) In addition to the voting rights provided by Sections 4(a), 4(b) and 4(c), whenever dividends of the Senior Preferred shall be in arrears in an amount equal to at least six quarterly dividends (whether or not consecutive), the number of members of the Board shall be increased by two and the holders of the Senior Preferred (voting as a voting group) will be entitled to vote for and elect such two additional directors of the Company at any meeting of shareholders of the Company at which directors are to be elected during the period such dividends remain in arrears. Whenever the right to elect directors shall have accrued to the holders of the Senior Preferred, the proper officers of the Company shall call a meeting for the election of such directors, such meeting to be held not less than 45 nor more than 90 days after the accrual of such right. The right of the holders of the Senior Preferred to vote for such two additional directors shall terminate when all accrued and unpaid dividends on the Senior Preferred have been paid or set apart for payment. The term of office of all directors so elected shall terminate immediately upon the termination of the right of the holders of the Senior Preferred to vote for such two additional directors. In connection with such right to vote, each holder of Senior Preferred will have one vote for each share of Senior Preferred held.

(e) On all matters presented before the holders of the Common Stock for their vote or consent, each share of Series A Preferred will be entitled to the number of votes equal to two shares of Common Stock (as adjusted for any stock dividends, combinations or splits with respect to shares of Common Stock); provided, however, the aggregate number of votes attributable to any Series A Holder’s shares of Series A Preferred shall be reduced by the sum of (x) the number of shares of Common Stock acquired by such Series A Holder upon the exercise of any warrant issued to such Series A Holder pursuant to the Preferred Stock Amendment and Warrant Issuance Agreement dated November 29, 2004 between the Company and the investor identified therein (each, a “Warrant”) and (y) the number of shares of Common Stock purchasable upon exercise of any Warrant that has been sold or transferred by such Series A Holder to any other person or entity.

(f) Notwithstanding any other provision of the Restated Articles or Bylaws of the Company, the holders of a majority of the then-outstanding Senior Preferred may consent in writing to any matter about which a class vote is contemplated by Section 4(b), 4(c) or 4(d), which written consent when so executed by the holders of a majority of the then-outstanding Senior Preferred will be deemed, subject to applicable Utah law, to satisfy the requirements of Section 4(b), 4(c) or 4(d), as applicable.

## 5. Reacquired Shares.

Any shares of Senior Preferred that are issued and thereafter cease to be issued and outstanding for any reason, whether because shares of Series A Preferred are converted into shares of Series B Preferred pursuant to Section 8 or shares of Senior Preferred are purchased or otherwise acquired by the Company in any manner whatsoever, will reduce the number of authorized shares of either Series A Preferred or Series B Preferred, as applicable, will be restored to the status of authorized but unissued shares of Preferred Stock of the Company, and may be reissued as part of a new series of Preferred Stock of the Company subject to the conditions and restrictions on issuance set forth herein or in any other articles of amendment creating a series of Preferred Stock or any other stock of the Company.

## 6. Liquidation, Dissolution or Winding Up.

Upon any liquidation, dissolution or winding up of the Company, no distribution will be made to the holders of shares of Junior Stock unless, prior thereto, the holders of shares of Senior Preferred shall have received in cash \$25.00 per share (the “Liquidation Price”) plus accrued and unpaid dividends to the date of payment. Neither a consolidation or merger of the Company with another corporation or other legal entity, nor a sale or transfer of all or part of the Company’s assets for cash, securities or other property will be considered a liquidation, dissolution or winding up of the Company for purposes of this Section 6.



7. Redemption.

(a) Redemption Right. The shares of Senior Preferred will not be redeemable, except as otherwise agreed between the Company and any holder or holders of Senior Preferred and except that:

(i) during the period beginning on March 8, 2005 and ending on March 8, 2006 (the "Initial Redemption Period"), the Company may, upon 15 business days prior notice to the holders of Senior Preferred, redeem all or any portion of the then-outstanding Senior Preferred at 100% of the then-applicable Liquidation Price plus accrued and unpaid dividends to the date of payment; and

(ii) provided it has redeemed during the period from July 15, 2005 through the end of the Initial Redemption Period 400,000 shares of Senior Preferred Stock, the Company shall have the right during the period beginning on March 9, 2006 and ending on December 31, 2006 (the "Second Redemption Period"), upon 15 business days prior notice to the holders of Senior Preferred, to redeem all or any portion of the then-outstanding Senior Preferred at 100% of the then-applicable Liquidation Price plus accrued and unpaid dividends to the date of payment; and

(iii) provided the Company has redeemed during the period beginning on July 15, 2005 through then end of the Second Redemption Period 800,000 shares of Senior Preferred Stock, the Company shall have the right during the period beginning on January 1, 2007 and ending on December 31, 2007 (the "Third Redemption Period," each of the Initial Redemption Period, the Second Redemption Period and the Third Redemption Period being called a "Redemption Period"), upon 15 business days prior notice to the holders of Senior Preferred, to redeem all or any portion of the then-outstanding Senior Preferred at 100% of the then-applicable Liquidation Price plus accrued and unpaid dividends to the date of payment; and

(iv) beginning on the fifth anniversary of the expiration of the last Redemption Period, during which the Company shall have the right to redeem Senior Preferred Stock based on the Company's redemption of Senior Preferred pursuant to subparts (i) through (iii) of this Section 7(a), the Company may, upon 15 business days prior notice to the holders of Senior Preferred, redeem all or any portion of the then-outstanding Senior Preferred at 101% of the then-applicable Liquidation Price plus accrued and unpaid dividends to the date of payment.

Any partial redemption effected pursuant to this Section 7 shall be made on a pro-rata basis among the holders of Senior Preferred in proportion to the shares of Senior Preferred then held by them. Notwithstanding anything to the contrary, the mandatory conversion of shares of Series A Preferred into shares of Series B Preferred pursuant to Section 8 hereof may occur at any time during the notice periods set forth in clauses (i) through (iv) of this Section 7(a).

(b) Redemption Notice. Any notice of redemption given pursuant to Section 7(a) ("Redemption Notice") will be given in writing by the Company by first class mail, postage prepaid, to each holder of record of Senior Preferred on the record date fixed for such redemption by the Board at such holder's address as it appears on the stock books of the Company, provided that no failure to give such notice nor any deficiency therein will affect the validity of the procedure for redemption of any shares of Senior Preferred except as to the holder or holders to whom the Company has failed to give such notice or whose notice was defective. The Redemption Notice will state:

(i) the redemption price;

(ii) the total number of shares of Senior Preferred being redeemed;

(iii) the date fixed for redemption by the Board, which date will occur within the applicable redemption period specified in Section 7(a) above (the "Redemption Date");

(iv) the place or places and manner in which the holder is to surrender his or her certificate(s) to the Company; and

(v) that dividends on the shares of Senior Preferred to be redeemed will cease to accumulate on the Redemption Date unless the Company defaults on the redemption price.

Upon surrender of the certificate(s) representing shares of Senior Preferred that are the subject of redemption pursuant to Section 7(a), duly endorsed (or otherwise in proper form for transfer, as determined by the Company), in the manner and at the place designated in the Redemption Notice and on the Redemption Date, the full redemption price for such shares will be paid in cash to the Person whose name appears on such certificate(s) as the owner thereof, and each surrendered certificate will be canceled and retired.

(c) Senior Dividends. On and after the Redemption Date or on or after the date of redemption otherwise agreed upon by and between the Company and any holder or holders of shares of Senior Preferred, unless the Company defaults in the payment in full of the applicable redemption price, dividends on the Senior Preferred to be redeemed will cease to accumulate, and all rights of the holders thereof will terminate with respect thereto on the Redemption Date (or such other redemption date, if applicable), other than the right to receive the applicable redemption price; provided, however, that if a Redemption Notice has been given as provided in Section 7(b) and the funds necessary for redemption (including an amount in cash in respect of all dividends that will accumulate to the Redemption Date) have been irrevocably deposited in trust with a bank having an aggregate shareholders' equity of at least \$5.0 billion for the equal and ratable benefit of all holders of shares of Senior Preferred that are to be redeemed, then, at the close of business on the day on which such funds are deposited in trust, dividends on the Senior Preferred to be redeemed will cease to accumulate and the holders thereof will cease to be shareholders of the Company and be entitled only to receive the redemption price.

8. Conversion.

(a) No Optional Conversion. Neither the Series A Preferred nor the Series B Preferred will be convertible into the Common Stock or any other class or series of the Company's capital stock except as provided in Section 8(b).

(b) Mandatory Conversion.

(i) If any Series A Holder voluntarily or involuntarily transfers, sells, assigns, devises, distributes or bequeaths any of such Series A Holder's interest in any shares of Series A Preferred (including, without limitation, the power to vote or provide a consent with respect to any shares of Series A Preferred by proxy or otherwise) (a "Transfer") to any Person (the "Transferee") other than a Permitted Transferee, then each share of Series A Preferred subject to such Transfer automatically, without any action on the part of the Company or such Series A Holder, will be deemed to be converted into one share of fully paid and non-assessable Series B Preferred immediately before such transfer is completed. In the event of such a transfer, the Company and the transfer agent for the Series A Preferred, if any (the "Transfer Agent"), shall not register the transfer of such shares of Series A Preferred except to the Company or a Permitted Transferee of such Series A Holder; provided, however, that such restrictions on transfer shall not apply to a Business Combination of the Company with or into another corporation or entity, if the Company is not the Surviving Person.

(ii) Notwithstanding anything to the contrary set forth herein, any Series A Holder may pledge such Series A Holder's shares to a financial institution pursuant to a bona fide pledge of such shares as collateral security of indebtedness due to the pledgee; provided, however, that such shares shall remain subject to the provisions of this Section 8(b) and may not be voted by the pledgee and, upon any transfer of such shares to the pledgee, such shares shall convert into Series B shares in accordance with paragraph (i) above.

(iii) Each certificate representing shares of Series A Preferred shall be endorsed with a legend that states that immediately prior to any Transfer of such shares of Series A Preferred such shares automatically will be converted into shares of Series B Preferred in accordance with the Restated Articles, and no such transfer will be valid unless such transfer has been recorded in stock transfer records kept by the Company or the Transfer Agent.

(iv) To effect any Transfer of Series A Preferred (which shall be converted into shares of Series B Preferred immediately prior to such Transfer as set forth in this Section 8(b)), the Series A Holder proposing to transfer such converted shares of Series A Preferred must surrender the certificate(s) representing such shares at the office of the Company or the Transfer Agent for the Series A Preferred with instructions identifying the Transferee proposed to receive converted shares of Series B Preferred. Thereupon, there shall be issued and delivered to such Transferee at such office in the name of the Transferee a certificate or certificates for the number of shares of Series B Preferred into which the Series A Preferred were converted.

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

9. Fractional Shares.

Following the split of the Old Series A Stock into the New Series A Stock, the Senior Preferred may not be issued in fractions of a share.

10. Rank.

The Series A Preferred and the Series B Preferred will have equal rank. The Senior Preferred will rank senior as to all capital stock of the Company, including all Junior Stock, in each case as to the payment of dividends or other distributions or upon liquidation, dissolution or winding up.

11. Certain Defined Terms.

In addition to the terms defined elsewhere in this Article IV.C, the following terms will have the following meanings when used herein with initial capital letters:

(a) "Affiliate" of any Person means any other Person that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such Person; and, for purposes of this definition only, "control" (including the terms "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a Person whether through the ownership of securities, by contract or agency or otherwise;

(b) "Business Combination" means any merger, consolidation, combination, recapitalization, reorganization or other transaction (whether or not the Company is the Surviving Person);

(c) "Permitted Transferee" means, with respect to any Series A Holder, any Person that is (i) an Affiliate of such Series A Holder, (ii) a stockholder, partner or member or other equity owner holding at least 5% of the outstanding equity of such Series A Holder (calculated on a fully diluted basis), or (iii) such Series A Holder's immediate family member or a trust for the benefit of such Series A Holder;

(d) “Person” means any individual, firm, corporation or other entity and included any successor (whether by merger or otherwise) of such entity; and

(e) “Surviving Person” means the continuing, surviving or resulting Person in a Business Combination, the Person receiving a transfer of all or a substantial part of the properties and assets of the Company, or the Person consolidating with or merging into the Company in a Business Combination in which the Company is the continuing or surviving Person, but in connection with which the Senior Preferred is exchanged or converted into the securities of any other Person or the right to receive cash or any other property.

#### **ARTICLE V**

To the fullest extent permitted by the Act or pursuant to any successor statute with similar effect, no director shall be liable to the Company or its shareholders for monetary damages. If the laws of the State of Utah are amended after the adoption of these Amended and Restated Articles of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the laws of the State of Utah, as so amended. The Company is authorized to indemnify directors and officers of the Company to the fullest extent permitted under applicable laws. Any repeal or modification of any applicable law or the foregoing provisions of this Article V shall not adversely affect any right of indemnification or limitation of liability of a director of the Company relating to acts or omissions occurring prior to such repeal or modification.