

Division of Corporations

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BASIC AMENDMENT

HOTOFFICE TECHNOLOGIES, INC.

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**ARTICLES OF AMENDMENT AND RESTATEMENT
OF
HOTOFFICE TECHNOLOGIES, INC.**

Pursuant to the provisions of Sections 607.1006 and 607.1007 of the Florida Business Corporation Act, the undersigned corporation adopts: (i) the amendment to its Articles of Incorporation; and (ii) the Second Amended and Restated Articles of Incorporation set forth below.

1. The name of the corporation is HotOffice Technologies, Inc. (the "Corporation").

2. The amendment to the Articles of Incorporation set forth in paragraph 3 below: (i) was duly recommended and adopted by the Board of Directors of the Corporation on July 7, 1999; (ii) was approved by the holders of the Corporation's common stock, par value \$.001 per share (the "Common Stock"), by written consent of a sufficient number of voting shares to approve the amendment; (iii) was approved by the holders of the Corporation's Series A Convertible Preferred Stock, par value \$.01 per share ("Series A"), by written consent of a sufficient number of voting shares to approve the amendment; (iv) was approved by the holders of the Corporation's Series B Preferred Stock, par value \$.01 per share ("Series B"), by written consent of a sufficient number of voting shares to approve the amendment; and (v) shall be effective immediately upon acceptance for filing by the Florida Department of State.

3. Article III of the Articles of Incorporation of the Corporation is amended in its entirety to read as follows:

**ARTICLE III
CAPITAL STOCK**

The aggregate number of shares of all classes of capital stock which this corporation shall have authority to issue is sixty million (60,000,000), consisting of: (i) forty five million (45,000,000) shares of common stock, par value \$.001 per share (the "Common Stock"); and (ii) fifteen million (15,000,000) shares of preferred stock, par value \$.01 per share (the "Preferred Stock").

The designations and the preferences, limitations and relative rights of the Preferred Stock of the Corporation are as follows:

A. The Preferred Stock may be issued from time to time in one or more classes or series, the shares of each class or series to have such designations and powers, preferences and rights, qualifications, limitations and restrictions thereof as are stated and expressed herein and in the resolution or resolutions providing for the issue of such class or series adopted by the Board of Directors as hereinafter prescribed.

B. Authority is hereby expressly granted to and vested in the Board of Directors to authorize the issuance of the Preferred Stock from time to time in one or more classes or series, to determine and take necessary proceedings fully to effect the issuance and redemption of any such

Preferred Stock, and, with respect to each class or series of the Preferred Stock, to fix and state by the resolution or resolutions from time to time adopted providing for the issuance thereof the following:

- (1) whether or not the class or series is to have voting rights, full or limited, or is to be without voting rights;
- (2) the preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to any class or series;
- (3) whether or not the shares of any class or series shall be redeemable and if redeemable the redemption price or prices, and the time or times at which and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;
- (4) whether or not the shares of a class or series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and if such retirement or sinking fund or funds be established, the annual amount thereof and the terms and provisions relative to the operation thereof;
- (5) the dividend rate, whether dividends are payable in cash, stock of the corporation, or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of the dividends payable on any other class or classes or series of stock, whether or not such dividend shall be cumulative or noncumulative, and if cumulative, the date or dates from which such dividends shall accumulate;
- (6) whether or not the shares of any class or series shall be convertible into, or exchangeable for, the shares of any other class or classes or of any other series of the same of any other class or classes of stock of the corporation and the conversion price or prices or ratio or ratios or the rate or rates at which such conversion or exchange may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions; and
- (7) such other special rights and protective provisions with respect to any class or series as the Board of Directors may deem advisable.

The shares of each class or series of the Preferred Stock may vary from the shares of any other series thereof in any or all of the foregoing respects. The Board of Directors may increase the number of shares of the Preferred Stock designated for any existing class or series by a resolution adding to such class or series authorized and unissued shares of the Preferred Stock not designated for any other class or series. The Board of Directors may decrease the number of shares of the

Preferred Stock not designated for any other class or series. The Board of Directors may decrease the number of shares of the Preferred Stock designated for any existing class or series by a resolution, subtracting from such series unissued shares of the Preferred Stock designated for such class or series, and the shares so subtracted shall become authorized, unissued and undesignated shares of the Preferred Stock.

C. Series A Convertible Preferred Stock. 1,888,448 shares of Preferred Stock shall be designated as Series A Convertible Preferred Stock ("Series A") and shall have the following rights and preferences:

(1) Voting.

(a) Except as set forth in Section C(1)(b) hereof, the holders of shares of Series A shall have the same voting rights as, and on an as converted basis vote together with, the holders of Common Stock, as a single class.

(b) The holders of Series A, voting as a single class, shall have the preferential right to:

(i) nominate and elect up to two (2) members of the Board of Directors of the Corporation;

(ii) nominate and elect one (1) member of each compensation and audit committee which the Corporation maintains at any time, with each of such committees to have no more than three (3) members;

(iii) approve, by the affirmative vote of holders of a majority of the issued and outstanding Series A:

(A) any proposed amendment to the Corporation's Articles of Incorporation or Bylaws;

(B) any increase in the size of the Corporation's Board of Directors;

(C) any material change in the primary lines of business of the Corporation;

(D) the declaration or payment of any dividend on the Common Stock (other than a dividend payable solely in shares of Common Stock);

(E) the adoption of any stock options or other stock incentive plans or grants or any stock options or other incentive awards;

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(F) any underwritten public offering of the Corporation, except for a Series A Qualifying IPO (as hereinafter defined);

(G) any merger, consolidation, sale or transfer of all or substantially all of the assets of, or a controlling interest in, the Corporation, unless the fair market value of the consideration for such transaction is at least \$10 per share on an as converted basis;

(H) issuance of any Preferred Stock or other class of stock which is senior to or on parity with the Series A;

(I) any liquidation, winding up or dissolution of the Corporation; and

(J) the Corporation incurring indebtedness to any one person or entity in excess of \$3,000,000.

(2) Conversion.

(a) Voluntary. Each share of Series A shall be convertible, at the election of the holder thereof, into one share of Common Stock, subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof. The holder shall surrender to the Corporation the certificates for Series A shares which are to be converted, duly endorsed in blank for transfer, together with a written request for conversion of the Series A shares into Common Stock.

(b) Automatic. Each share of Series A shall be converted automatically into one share of Common Stock (subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof), upon the happening of any of the following events (each, an "Automatic Conversion Event"):

(i) the consummation of an initial public offering (a "Series A Qualifying IPO") by the Corporation which results in not less than \$25 million of gross proceeds to the Corporation at a per share offering price of at least \$10 per share, as adjusted for any stock-split, dividend or other adjustment occurring after the date of issuance of the Series A;

(ii) a merger, consolidation or sale of a controlling interest in the Corporation (subject to the rights of the holders of the Series A to approve such merger, consolidation or sale of a controlling interest, pursuant to Section C.(1)(b)(iii) of this Article III); or

(iii) the approval of the holders of a majority of the Series A.

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The Corporation shall send written notice to each holder of Series A shares within five (5) days after the occurrence of an Automatic Conversion Event. Upon surrender of its certificate representing Series A shares, duly endorsed in blank for transfer, the holder shall be entitled to receive a certificate for the appropriate number of shares of Common Stock.

(3) Dividends. The holders of the Series A shall have dividend rights and preferences set forth in Section E.(3) of this Article III.

(4) Liquidation. The holders of the Series A shares shall have the rights set forth in Section E.(4) of this Article III upon the liquidation, dissolution or winding up of the Corporation.

(5) Redemption. The Series A shares are not redeemable.

(6) Anti-Dilution.

(a) Stock Splits, Dividends, Etc. In the event of the occurrence of an Adjustment Event (as hereinafter defined), the conversion ratio for conversion of Series A shares to Common Stock shall be adjusted in order to prevent dilution of the conversion rights granted in this Article. In such event, the number of shares of Common Stock to be received upon conversion of one share of Series A (the "A Conversion Ratio") shall be adjusted as follows: the number of shares of Common Stock receivable upon conversion of one share of Series A immediately before the Adjustment Event shall be multiplied by a fraction, the numerator of which is the number of shares of Common Stock issued and outstanding immediately after the Adjustment Event, and the denominator of which is the number of shares of Common Stock issued and outstanding immediately before the Adjustment Event.

As used herein, the term "Adjustment Event" means the occurrence of any of the following events:

(i) a stock split or other subdivision of outstanding shares of Common Stock into a greater number of shares, merger, consolidation or other business combination transaction of the Corporation as a result of which the shareholders of the Corporation prior to such event will beneficially own less than 50% of the capital stock of the surviving or resulting entity;

(ii) a reverse stock split or other combination of outstanding shares of Common Stock into a smaller number of shares;

(iii) a distribution of Common Stock with respect to outstanding shares of Common Stock;

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(iv) any other change in the corporate or capital structure of the Corporation which has the effect of diluting or adversely affecting the rights and privileges of the holders of the Series A; or

(v) any other event which, in the opinion of the Board of Directors of the Corporation, does not fall directly within the foregoing definitions of Adjustment Event but should be treated as an Adjustment Event in order to protect the rights of the holders of Series A shares consistently with the essential intent and principles of this Article.

(b) Weighted Average Formula Adjustment.

(i) As used in herein:

"Applicable Issuance" means any issuance or sale of Common Stock by the Corporation other than: (A) up to 2,500,000 shares issued pursuant to the exercise of stock options granted or to be granted under the Corporation's 1995 Employee Stock Option Plan, as Amended and Restated as of May 16, 1998; (B) up to 100,000 shares issued pursuant to the exercise of stock options granted under the Corporation's 1997 Stock Option Plan for Non-Employees; (C) that certain common stock purchase warrant for up to 291,829 shares of Common Stock issued on May 15, 1998; (D) shares issued pursuant to the exercise of any options or warrants approved by the Board of Directors or any committee thereof and issued by the Corporation prior to the issuance of the Series A; (E) shares issued pursuant to the exercise of the conversion rights of other securities; or (F) shares issued in an Adjustment Event.

"A Conversion Price" means \$4.06 per share, divided by the A Conversion Ratio in effect immediately prior to the Applicable Issuance.

"Price" means the amount of consideration per share received by the Corporation in connection with an Applicable Issuance. In the case of non-cash consideration received by the Corporation, the Board of Directors shall determine in good faith the fair market value of such consideration.

(ii) If the Corporation ever issues or sells Common Stock in an Applicable Issuance for a Price per share that is less than the A Conversion Price then in effect, then the A Conversion Price shall be adjusted to that price determined by multiplying the A Conversion Price (as in effect immediately prior to the Applicable Issuance) by a fraction:

(A) the numerator of which is the number of shares of Common Stock outstanding immediately prior to the Applicable Issuance plus the number of shares of Common Stock which the aggregate Price received by the Corporation for the total number of such shares of Common Stock so issued would purchase at the A Conversion Price in effect immediately prior to the Applicable Issuance; and

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(B) the denominator of which is the number of shares of Common Stock outstanding immediately after the Applicable Issuance.

The A Conversion Ratio shall thereafter become \$4.06 divided by the adjusted A Conversion Price determined pursuant to the preceding formula. No adjustment of the A Conversion Price shall be made under this Subsection (b) upon the issuance of any security which is issued pursuant to the exercise of any warrants or subscription or purchase rights therefor, if any adjustment has previously been made in the A Conversion Price then in effect upon the issuance of such warrants or other rights pursuant to Subsection (c) below.

(c) Common Stock Equivalents.

(i) As used in this Subsection (c), the term "Common Stock Equivalent" means any security convertible into, exchangeable or exercisable for Common Stock or any warrant, option or other right to purchase Common Stock or any security convertible into Common Stock. Common Stock Equivalent shall not include the warrant referred to in Section C.(6)(b)(i)(C) of this Article III or any option or similar right granted pursuant to the terms of an employee, officer or director stock purchase or stock option plan approved by the Board of Directors or any committee thereof, provided that the total number of shares of Common Stock which may be issued or acquired under all such plans of the Corporation has not exceeded 2,600,000 shares.

(ii) If the Corporation, at any time while any of the Series A shares are outstanding, issues any Common Stock Equivalent and the price per share for which Common Stock may be issuable thereafter upon the exercise or conversion of such Common Stock Equivalent is less than the A Conversion Price then in effect, or if, after any such issuance the price per share for which Common Stock may be issuable thereafter is amended, and such price as so amended is less than the A Conversion Price in effect at the time of such amendment, then the A Conversion Price upon each such issuance or amendment shall be adjusted as provided in Subsection (b) above, on the basis that: (i) the maximum number of shares of Common Stock issuable pursuant to all such Common Stock Equivalents shall be deemed to have been issued on the earlier of: (A) the date on which the Corporation enters into a firm contract for the issuance of such Common Stock Equivalent, or (B) the date of actual issuance of such Common Stock Equivalent; and (ii) the aggregate consideration for such maximum number of shares of Common Stock shall be deemed to be the minimum consideration received and receivable by the Corporation for the issuance of such shares of Common Stock pursuant to such Common Stock Equivalent.

(7) Pre-Emptive Rights. The holders of Series A shares shall have the pre-emptive rights set forth in Section E.(7) of this Article III.

D. Series B Convertible Preferred Stock. 5,000,000 shares of Preferred Stock shall be designated as Series B Convertible Preferred Stock ("Series B") and shall have the following rights and preferences:

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(1) Voting.

(a) Except as set forth in Section D.(1)(b) of this Article III, the holders of shares of Series B shall have the same voting rights as, and on an as converted basis vote together with, the holders of Common Stock, as a single class.

(b) The holders of Series B, voting as a single class, shall have the preferential right to:

(i) nominate and elect one (1) member of the Board of Directors of the Corporation, or at the election of the holders of a majority of the issued and outstanding shares of Series B, appoint a non-voting representative to attend all meetings of the Board of Directors of the Corporation and all committees thereof; and

(ii) approve, by the affirmative vote of the holders of 66-2/3 of the issued and outstanding Series B:

(A) any proposed amendment to the Corporation's Articles of Incorporation;

(B) any increase in the size of the Corporation's Board of Directors;

(C) any material change in the primary lines of business of the Corporation;

(D) any underwritten public offering of the Corporation, except for a Series B Qualifying IPO (as hereinafter defined);

(E) any merger, consolidation, sale or transfer of all or substantially all of the assets of, or a controlling interest in, the Corporation;

(F) any liquidation, winding up or dissolution of the Corporation;

(G) issuance of any Preferred Stock or other class of stock which is senior to or on parity with the Series B;

(H) the declaration or payment of any dividend on the Common Stock (other than a dividend payable solely in shares of Common Stock); and

(I) the Corporation incurring indebtedness to any

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one person or entity in excess of \$3,000,000.

(2) Conversion.

(a) Voluntary. Each share of Series B shall be convertible, at the election of the holder thereof, into one share of Common Stock, subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof. The holder shall surrender to the Corporation the certificates for Series B shares which are to be converted, duly endorsed in blank for transfer, together with a written request for conversion of the Series B shares into Common Stock.

(b) Automatic. Each share of Series B shall be converted automatically into one share of Common Stock (subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof), upon the happening of any of the following events (each, an "Automatic Conversion Event"):

(i) the consummation of an initial public offering (a "Series B Qualifying IPO") by the Corporation which results in not less than \$25 million of gross proceeds to the Corporation at a per share offering price of at least \$15.42 per share, as adjusted for any stock-split, dividend or other adjustment occurring after the issuance of the Series B;

(ii) a merger, consolidation or sale of a controlling interest in the Corporation (subject to the rights of the holders of the Series B to approve such merger, consolidation or sale of a controlling interest, pursuant to Section D(1)(b)(ii) of this Article III); or

(iii) the approval of the holders of a majority of the Series B.

The Corporation shall send written notice to each holder of Series B shares within five (5) days after the occurrence of an Automatic Conversion Event. Upon surrender of its certificate representing Series B shares, duly endorsed in blank for transfer, the holder shall be entitled to receive a certificate for the appropriate number of shares of Common Stock.

(3) Dividends. The holders of the Series B shall have dividend rights and preferences set forth in Section E.(3) of this Article III.

(4) Liquidation. The holders of the series B shall have the rights set forth in Section E.(4) of this Article III upon the liquidation, dissolution or winding up of the Corporation.

(5) Redemption. At any time after March 31, 2003 and upon ninety (90) days written notice to the Corporation from holders of at least a majority of the Series B shares, the Corporation shall redeem, out of funds legally available for such purpose, all of the then issued and outstanding Series B at the redemption price per share equal to 150 percent of the purchase price

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originally paid for the Series B shares upon issuance together with any declared but unpaid dividends thereon. Such redemption price per share shall be adjusted to give proper effect to: (i) a stock split or other subdivision of outstanding shares of Series B into a greater number of shares; (ii) a reverse stock split or other combination of outstanding shares of Series B into a smaller number of shares; or (iii) a distribution of Series B shares with respect to outstanding shares of Series B. Any shares of Series B that may not legally be redeemed on the date of redemption shall be redeemed by the Corporation promptly after funds become legally available for such purpose. Any shares of Series B redeemed pursuant to this section shall have the status of authorized by unissued shares. The Corporation shall not be obligated to make payments into or to maintain any sinking fund for the redemption of the Series B.

(6) Anti-Dilution.

(a) Stock Splits, Dividends, Etc. In the event of the occurrence of an Adjustment Event (as hereinafter defined), the conversion ratio for conversion of Series B shares to Common Stock shall be adjusted in order to prevent dilution of the conversion rights granted in this Article. In such event, the number of shares of Common Stock to be received upon conversion of one share of Series B (the "B Conversion Ratio") shall be adjusted as follows: the number of shares of Common Stock receivable upon conversion of one share of Series B immediately before the Adjustment Event shall be multiplied by a fraction, the numerator of which is the number of shares of Common Stock issued and outstanding immediately after the Adjustment Event, and the denominator of which is the number of shares of Common Stock issued and outstanding immediately before the Adjustment Event.

As used herein, the term "Adjustment Event" means the occurrence of any of the following events:

- (i) a stock split or other subdivision of outstanding shares of Common Stock into a greater number of shares, merger, consolidation or other business combination transaction of the Corporation as a result of which the shareholders of the Corporation prior to such event will beneficially own less than 50% of the capital stock of the surviving or resulting entity;
- (ii) a reverse stock split or other combination of outstanding shares of Common Stock into a smaller number of shares;
- (iii) a distribution of Common Stock with respect to outstanding shares of Common Stock;
- (iv) any other change in the corporate or capital structure of the Corporation which has the effect of diluting or adversely affecting the rights and privileges of the holders of the Series B; or

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(v) any other event which, in the opinion of the Board of Directors of the Corporation, does not fall directly within the foregoing definitions of Adjustment Event but should be treated as an Adjustment Event in order to protect the rights of the holders of Series B shares consistently with the essential intent and principles of this Article.

(b) Weighted Average Formula Adjustment.

(i) As used in herein:

"Applicable Issuance" means any issuance or sale of Common Stock by the Corporation other than: (A) up to 2,500,000 shares issued pursuant to the exercise of stock options granted or to be granted under the Corporation's 1995 Employee Stock Option Plan, as Amended and Restated as of May 16, 1998; (B) up to 100,000 shares issued pursuant to the exercise of stock options granted under the Corporation's 1997 Stock Option Plan for Non-Employees; (C) shares issued pursuant to the exercise of any options or warrants approved by the Board of Directors or a committee thereof and issued by the Corporation on or prior to the issuance of the Series B; (D) shares issued pursuant to the exercise of the conversion rights of other securities; or (E) shares issued in an Adjustment Event.

"B Conversion Price" means \$5.14 per share, divided by the B Conversion Ratio in effect immediately prior to the Applicable Issuance.

"Price" means the amount of consideration per share received by the Corporation in connection with an Applicable Issuance. In the case of non-cash consideration received by the Corporation, the Board of Directors shall determine in good faith the fair market value of such consideration.

(ii) If the Corporation ever issues or sells Common Stock in an Applicable Issuance for a Price per share that is less than the B Conversion Price then in effect, then the B Conversion Price shall be adjusted to that price determined by multiplying the B Conversion Price (as in effect immediately prior to the Applicable Issuance) by a fraction:

(A) the numerator of which is the number of shares of Common Stock outstanding immediately prior to the Applicable Issuance plus the number of shares of Common Stock which the aggregate Price received by the Corporation for the total number of such shares of Common Stock so issued would purchase at the B Conversion Price in effect immediately prior to the Applicable Issuance; and

(B) the denominator of which is the number of shares of Common Stock outstanding immediately after the Applicable Issuance.

The B Conversion Ratio shall thereafter become \$5.14 divided by the adjusted B Conversion Price determined pursuant to the preceding formula. No adjustment of the B Conversion Price shall

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be made under this Subsection (b) upon the issuance of any security which is issued pursuant to the exercise of any warrants or subscription or purchase rights therefor, if any adjustment has previously been made in the B Conversion Price then in effect upon the issuance of such warrants or other rights pursuant to Subsection (c) below.

(c) Common Stock Equivalents.

(i) As used in this Subsection (c), the term "Common Stock Equivalent" means any security convertible into, exchangeable or exercisable for Common Stock or any warrant, option or other right to purchase Common Stock or any security convertible into Common Stock. Common Stock Equivalent shall not include any option or similar right granted pursuant to the terms of an employee, officer or director stock purchase or stock option plan approved by the Board of Directors or a committee thereof, provided that the total number of shares of Common Stock which may be issued or acquired under all such plans of the Corporation has not exceeded 2,600,000 shares.

(ii) If the Corporation, at any time while any of the Series B shares are outstanding, issues any Common Stock Equivalent and the price per share for which Common Stock may be issuable thereafter upon the exercise or conversion of such Common Stock Equivalent is less than the B Conversion Price then in effect, or if, after any such issuance the price per share for which Common Stock may be issuable thereafter is amended, and such price as so amended is less than the B Conversion Price in effect at the time of such amendment, then the B Conversion Price upon each such issuance or amendment shall be adjusted as provided in Subsection (b) above, on the basis that: (i) the maximum number of shares of Common Stock issuable pursuant to all such Common Stock Equivalents shall be deemed to have been issued on the earlier of: (A) the date on which the Corporation enters into a firm contract for the issuance of such Common Stock Equivalent, or (B) the date of actual issuance of such Common Stock Equivalent; and (ii) the aggregate consideration for such maximum number of shares of Common Stock shall be deemed to be the minimum consideration received and receivable by the Corporation for the issuance of such shares of Common Stock pursuant to such Common Stock Equivalent.

(7) Pre-Emptive Rights. The holders of Series B shares shall have the pre-emptive rights set forth in Section E.(7) of this Article III.

E. Series C Convertible Preferred Stock. 5,000,000 shares of Preferred Stock shall be designated as Series C Convertible Preferred Stock ("Series C") and shall have the following rights and preferences:

(1) Voting.

(a) Except as set forth in Section E(1)(b) of this Article III, the holders of shares of Series C shall have the same voting rights as, and on an as converted basis vote together with, the holders of Common Stock, as a single class.

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(b) The holders of Series C, voting as a single class, shall have the preferential right to approve, by the affirmative vote of the holders of more than 50% of the issued and outstanding Series C:

- (i) any proposed amendment to the Corporation's Articles of Incorporation or Bylaws;
- (ii) any increase in the size of the Corporation's Board of Directors;
- (iii) any material change in the primary lines of business of the Corporation;
- (iv) the adoption of any stock options or other stock incentive plans or grants or any stock options or other incentive awards;
- (v) any underwritten public offering of the Corporation, except for a Series C Qualifying IPO (as hereinafter defined);
- (vi) the reclassification of any outstanding shares into shares having preference or priority as to dividends or assets senior to or on parity with the Series C;
- (vii) any merger, consolidation, sale or transfer of all or substantially all of the assets of, or a controlling interest in, the Corporation;
- (viii) any liquidation, winding up or dissolution of the Corporation;
- (ix) issuance of any Preferred Stock or other class of stock which is senior to or on parity with the Series C;
- (x) the declaration or payment of any dividend on the Common Stock (other than a dividend payable solely in shares of Common Stock); and
- (xi) the Corporation incurring indebtedness to any one person or entity in excess of \$3,000,000.

(2) Conversion.

(a) Voluntary. Each share of Series C shall be convertible, at the election of the holder thereof, into one share of Common Stock, subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof. The holder shall surrender to the Corporation the certificates for Series C shares which are to be converted, duly endorsed in blank

for transfer, together with a written request for conversion of the Series C shares into Common Stock.

(b) **Automatic.** Each share of Series C shall be converted automatically into one share of Common Stock (subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof), upon the happening of any of the following events (each, an "Automatic Conversion Event"):

(i) upon the consummation of an initial public offering of the Corporation's Common Stock which results in not less than \$25 million of gross proceeds to the Corporation at a per share offering price of at least \$15.90 per share (the "Series C Qualifying IPO"), as adjusted for any stock-split, dividend or other adjustment occurring after the issuance of the Series C;

(ii) a merger, consolidation or sale of a controlling interest in the Corporation (subject to the rights of the holders of the Series C to approve such merger, consolidation or sale of a controlling interest, pursuant to Section E(1)(b)(ii) of this Article III); or

(iii) the approval of the holders of a majority of the Series C.

The Corporation shall send written notice to each holder of Series C shares within five (5) days after the occurrence of an Automatic Conversion Event. Upon surrender of its certificate representing Series B shares, duly endorsed in blank for transfer, the holder shall be entitled to receive a certificate for the appropriate number of shares of Common Stock.

(3) **Dividends.**

(a) **Cash.** The holders of shares of Series A, Series B and Series C shall be entitled to dividends when and if declared by the Board of Directors. The annual amount of such preferential dividend, if any, to be paid to each holder of the Series A, Series B and Series C shall be equal to ten percent (10%) of the purchase price paid such holder to acquire his or her shares of Series A, Series B and/or Series C ("Preferential Dividend"). The Preferential Dividend, if any, is not cumulative. The Preferential Dividend shall be paid to the holders of the Series A, Series B and Series C before any dividend is paid or declared on the Common Stock or any other class or series of Common Stock or Preferred Stock. After the Preferential Dividend has been paid, any further dividend shall be paid, on a fully converted and pro-rata basis, to the holders of the Common Stock, the Series A, the Series B, the Series C and any other series of Preferred Stock.

(b) **Non-Cash.** When and if declared by the Board of Directors, the holders of the Series A, Series B, and Series C shall be entitled to share equally, on a fully converted and pro rata basis, in any non-cash dividend or distribution.

(4) **Liquidation.** Upon the liquidation, dissolution or winding up of the Corporation, a holder of shares of Series A, Series B or Series C shall be entitled to receive a

payment equal to the purchase price originally paid for the Series A, Series B or Series C shares upon issuance together with any declared but unpaid dividends thereon (the "Preference Amount"), before any payment is made to the holders of the Common Stock. After such payment has been made to the holders of Series A, Series B and Series C shares, any remaining assets of the Corporation shall be distributed to the holders of shares of Common Stock, Series A, Series B and Series C on a fully converted and pro rata basis. In the event that the Corporation does not have sufficient assets to permit payment of the Preference Amount in full to all holders of the Series A, Series B and Series C, then the assets of the Corporation shall be distributed to the holders of the Series A, Series B and Series C in proportion to the Preference Amount each such holder would otherwise be entitled to receive.

Unless otherwise waived by a majority in interest of the Series A, voting as a class, the Series B, voting as a class, and Series C, voting as a class, a merger or consolidation of the Corporation in which the shareholders of the Corporation prior to such merger or consolidation do not retain a majority of the voting power of the surviving corporation, or a sale or transfer of all or substantially all of the Corporation's assets shall, solely for purposes of the first sentence of this Section E(4) of Article III, be deemed to be a liquidation, dissolution and winding up of the Corporation.

(5) Redemption. At any time after March 31, 2003 and upon ninety (90) days written notice to the Corporation from holders of at least a majority of the Series C shares, the Corporation shall redeem, out of funds legally available for such purpose, all of the then issued and outstanding Series C at the redemption price per share equal to 150 percent of the purchase price originally paid for the Series C shares upon issuance together with any declared but unpaid dividends thereon. Such redemption price per share shall be adjusted to give proper effect to: (i) a stock split or other subdivision of outstanding shares of Series C into a greater number of shares; (ii) a reverse stock split or other combination of outstanding shares of Series C into a smaller number of shares; or (iii) a distribution of Series C shares with respect to outstanding shares of Series C. Any shares of Series C that may not legally be redeemed on the date of redemption shall be redeemed by the Corporation promptly after funds become legally available for such purpose. Any shares of Series C redeemed pursuant to this section shall have the status of authorized but unissued shares. The Corporation shall not be obligated to make payments into or to maintain any sinking fund for the redemption of the Series C.

(6) Anti-Dilution.

(a) Stock Splits, Dividends, Etc.. In the event of the occurrence of an Adjustment Event (as hereinafter defined), the conversion ratio for conversion of Series C shares to Common Stock shall be adjusted in order to prevent dilution of the conversion rights granted in this Article. In such event, the number of shares of Common Stock to be received upon conversion of one share of Series C (the "C Conversion Ratio") shall be adjusted as follows: the number of shares of Common Stock receivable upon conversion of one share of Series C immediately before the Adjustment Event shall be multiplied by a fraction, the numerator of which is the number of shares of Common Stock issued and outstanding immediately after the Adjustment Event, and the denominator of which is the number of shares of Common Stock issued and outstanding immediately before the Adjustment Event.

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As used herein, the term "Adjustment Event" means the occurrence of any of the following events:

(i) a stock split or other subdivision of outstanding shares of Common Stock into a greater number of shares, merger, consolidation or other business combination transaction of the Corporation as a result of which the shareholders of the Corporation prior to such event will beneficially own less than 50% of the capital stock of the surviving or resulting entity;

(ii) a reverse stock split or other combination of outstanding shares of Common Stock into a smaller number of shares;

(iii) a distribution of Common Stock with respect to outstanding shares of Common Stock;

(iv) any other change in the corporate or capital structure of the Corporation which has the effect of diluting or adversely affecting the rights and privileges of the holders of the Series C; or

(v) any other event which, in the opinion of the Board of Directors of the Corporation, does not fall directly within the foregoing definitions of Adjustment Event but should be treated as an Adjustment Event in order to protect the rights of the holders of Series C shares consistently with the essential intent and principles of this Article.

(b) Full Ratchet Adjustment

(i) As used in herein:

"Applicable Issuance" means any issuance or sale of Common Stock by the Corporation other than: (A) up to 2,500,000 shares issued pursuant to the exercise of stock options granted under the Corporation's 1995 Employee Stock Option Plan, as Amended and Restated as of May 16, 1998; (B) up to 100,000 shares issued pursuant to the exercise of stock options granted under the Corporation's 1997 Stock Option Plan for Non-Employees; (C) shares issued pursuant to the exercise of any options or warrants approved by the Board of Directors or a committee thereof and issued by the Corporation on or prior to the issuance of the Series C; (D) shares issued pursuant to the exercise of the conversion rights of other securities issued by the Corporation on or prior to the issuance of the Series C; or (E) shares issued in an Adjustment Event.

"C Conversion Price" means \$5.30 per share, divided by the C Conversion Ratio in effect immediately prior to the Applicable Issuance.

"Price" means the amount of consideration per share received by the Corporation in connection with an Applicable Issuance. In the case of non-cash consideration received by the Corporation, the Board of Directors shall determine in good faith the fair market value of such consideration.

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(ii) If the Corporation ever issues or sells Common Stock in an Applicable Issuance for no consideration or for a Price per share that is less than the C Conversion Price then in effect on the date of and immediately prior to such issue, then the C Conversion Price shall be reduced, concurrently with such issue, to the Price per share received by the Corporation for the issue of the Common Stock.

(c) Common Stock Equivalents.

(i) As used in this Subsection (c), the term "Common Stock Equivalent" means any security convertible into, exchangeable or exercisable for Common Stock or any warrant, option or other right to purchase Common Stock or any security convertible into or exchangeable for Common Stock. Common Stock Equivalent shall not include any option or similar right granted pursuant to the terms of an employee, officer or director stock purchase or stock option plan approved by the Board of Directors or a committee thereof, provided that the total number of shares of Common Stock which may be issued or acquired under all such plans of the Corporation has not exceeded 2,600,000 shares.

(ii) If the Corporation, at any time while any of the Series C shares are outstanding, issues any Common Stock Equivalent and the price per share for which Common Stock may be issuable thereafter upon the exercise or conversion of such Common Stock Equivalent is less than the C Conversion Price then in effect, or if, after any such issuance the price per share for which Common Stock may be issuable thereafter is amended, and such price as so amended is less than the C Conversion Price in effect at the time of such amendment, then the C Conversion Price upon each such issuance or amendment shall be adjusted as provided in Subsection (b) above, on the basis that: (i) the maximum number of shares of Common Stock issuable pursuant to all such Common Stock Equivalents shall be deemed to have been issued on the earlier of: (A) the date on which the Corporation enters into a firm contract for the issuance of such Common Stock Equivalent, or (B) the date of actual issuance of such Common Stock Equivalent; and (ii) the aggregate consideration for such maximum number of shares of Common Stock shall be deemed to be the minimum consideration received and receivable by the Corporation for the issuance of such shares of Common Stock pursuant to such Common Stock Equivalent.

(7) Pre-Emptive Rights.

(a) Holders of Series A, Series B and Series C shares shall have the pre-emptive right to acquire shares of any class of stock of the Corporation proposed to be sold by the Corporation ("Shares") upon the terms and conditions set forth in this Subsection (7).

(b) Upon the sale by the Corporation, for cash or other consideration of any Shares, each holder of Series A, Series B and Series C shares shall have the pre-emptive right, within the time (not to be less than ten (10) days) and on the terms fixed by the Corporation, subject to the provision of this Article III, to purchase such Shares, not to exceed the same proportion thereof as: (i) the number of shares of Common Stock that the Series A, Series B and Series C shares held by such holder are convertible into on a record date ("Record Date") established by the Board of Directors bears to (ii) the total number of shares of Common Stock

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outstanding on the Record Date. For purposes of clarification, the pre-emptive rights granted hereunder shall not be applicable to the issuance of shares in the Corporation's initial public offering if such offering would result in the automatic conversion to the Series A, Series B and/or Series C shares.

(c) If one or more holders of Series A, Series B and Series C shares ("Exercising Holders") exercise the pre-emptive rights pursuant to Section E(7)(b) of this Article III, and one or more such holders ("Non-Exercising Holders") do not exercise such pre-emptive rights, the Shares that the Non-Exercising Holders ("Additional Shares") declined to acquire shall be offered to the Exercising Holders on a pro rata fully converted basis determined as of the Record Date. Within five (5) days of receipt of notice from the Corporation, an Exercising Holder shall advise the Corporation of the number of Additional Shares to be acquired by the Exercising Holder pursuant to this Section E(7)(c) of this Article III.

(d) The pre-emptive rights granted hereunder shall not be applicable to the issuance of shares of stock of any class pursuant to: (i) the exercise or conversion of options, warrants, notes or other rights to purchase such stock issued and outstanding as of the date of the Corporation's Second Amended and Restated Articles of Incorporation including, without limitation, those certain warrants issued to one person and three entities in connection with the conversion of certain convertible promissory notes and to one entity in connection with the purchase of the Series C Preferred; and (ii) the exercise of employee stock options pursuant to an employee stock option plan duly approved by the Corporation's Board of Directors or a committee thereof. Notwithstanding clause (d)(i) above, a holder of the Series A shall be entitled to exercise his, her or its preemptive rights in full with respect to the exercise of any option or warrant that was issued by the Corporation prior to May 15, 1998 but after such holder acquired the Series A. Furthermore, shares of stock shall not be subject to pre-emptive rights if they are: (i) issued pursuant to a plan adjusting any rights to fractional shares or fractional interests in order to prevent the issuance of fractional shares; (ii) issued in connection with any stock dividend, stock split or similar adjustment in respect to stock; (iii) issued in connection with a merger, consolidation, acquisition of all or substantially all of the assets or shares of beneficial interest of any entity, or pursuant to an order of a court of competent jurisdiction unless such order provides otherwise; or (iv) released from such pre-emptive rights by the written consent of the holders of all of the Series A, Series B and Series C shares then outstanding.

(e) Whenever any pre-emptive rights for Shares have not been exercised by the holders of Series A, Series B and Series C shares, and by the terms of such offer, such pre-emptive rights have ceased to be exercisable, the Corporation may authorize the disposal of the Shares previously subject to such unexercised rights at the same price offered pursuant to the pre-emptive rights.

8. First Qualified Public Offering.

(a) Right of First Refusal. Subject to the limitations set forth in this Section 8 and notwithstanding Section 7(b) hereof, the Corporation hereby grants to holders of Series C a right of first refusal to purchase such holder's Proportionate Share (as defined below) of

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the shares of Common Stock from the shares of Common Stock to be issued at the closing of the Corporation's Series C Qualifying IPO. The price per share of Common Stock which each such holder becomes entitled to purchase by reason hereof shall be the public offering price per share of Common Stock in the Series C Qualifying IPO (the "Offering Price"). The "Proportionate Share" for each such holder shall be that number of shares of the Common Stock to be issued in the Series C Qualifying IPO necessary so that, after giving effect to such issuance, such holder will continue to maintain its same proportionate equity ownership in the Corporation, as of the date immediately prior to the effective date of the registration statement covering such Series C Qualifying IPO.

(b) **Limitations.** Subject to the limitations set forth in the following sentence, the "Proportionate Share" for each such holder shall be that number of shares of the Common Stock to be issued in the Series C Qualifying IPO necessary so that, after giving effect to such issuance, such holder will continue to maintain its same proportionate equity ownership in the Corporation, as of the date immediately prior to the effective date of the registration statement covering such Series C Qualifying IPO. Notwithstanding the foregoing sentence, the managing underwriter of such offering shall be entitled to reduce in whole or in part the Proportionate Share to the extent determined necessary by the managing underwriter, in its sole discretion after a reasoned review, to the success of such offering (including without limitation that the proposed purchase by the holders of Series C of their Proportionate Share would materially and adversely affect the offering price and the likelihood of completion) for reasons set forth in writing to the holders no less than five days prior to the anticipated effective date of the registration statement covering such offering, provided, however, that (i) such Proportionate Share, in the aggregate for all holders of Series C Preferred shall not be reduced below 10% of the number of shares of Common Stock issued by the Corporation in the Series C Qualifying IPO (exclusive of the number of shares of Common Stock issued pursuant to any underwriter's overallotment option), and (ii) the number of shares of Common Stock issued by the Corporation in the Series C Qualified IPO which are Directed Shares (as defined below) shall not exceed an amount equal to 5% of the total number of shares of Common Stock issued by the Corporation in the Series C Qualifying IPO (exclusive of the number of shares of Common Stock issued pursuant to any underwriter's overallotment option) reduced by the same percentage as the Proportionate Share is reduced. For purposes of this paragraph (b), Directed Shares shall mean "directed shares", "friends of the Corporation" shares or other shares that are directed by the underwriters to employees, customers or other contacts of the Corporation or to retail accounts of the underwriters in "spinning" transactions. Any reduction (in whole or in part) in any holder's Proportionate Share shall be *pro rata* among the holders expressing an interest in purchasing shares at the Offering Price in the Series C Qualifying IPO (the "IPO Purchasers") based upon the number of shares of Series C then held by the IPO Purchasers.

4. The Second Amended and Restated Articles of Incorporation adopted is as follows:

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF**

HOTOFFICE TECHNOLOGIES, INC.

The undersigned incorporator hereby forms a corporation under Chapter 607 of the laws of the State of Florida.

ARTICLE I

NAME AND ADDRESS

The name of the corporation shall be:

HOTOFFICE TECHNOLOGIES, INC.

The present address of the corporation's principal office is:

**5201 Congress Avenue
Boca Raton, Florida 33487**

ARTICLE II

PURPOSE AND POWERS

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

ARTICLE III
CAPITAL STOCK

The aggregate number of shares of all classes of capital stock which this corporation shall have authority to issue is sixty million (60,000,000), consisting of: (i) forty five million (45,000,000) shares of common stock, par value \$.001 per share (the "Common Stock"); and (ii) fifteen million (15,000,000) shares of preferred stock, par value \$.01 per share (the "Preferred Stock").

The designations and the preferences, limitations and relative rights of the Preferred Stock of the Corporation are as follows:

A. The Preferred Stock may be issued from time to time in one or more classes or series, the shares of each class or series to have such designations and powers, preferences and rights, qualifications, limitations and restrictions thereof as are stated and expressed herein and in the resolution or resolutions providing for the issue of such class or series adopted by the Board of Directors as hereinafter prescribed.

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B. Authority is hereby expressly granted to and vested in the Board of Directors to authorize the issuance of the Preferred Stock from time to time in one or more classes or series, to determine and take necessary proceedings fully to effect the issuance and redemption of any such Preferred Stock, and, with respect to each class or series of the Preferred Stock, to fix and state by the resolution or resolutions from time to time adopted providing for the issuance thereof the following:

- (1) whether or not the class or series is to have voting rights, full or limited, or is to be without voting rights;
- (2) the preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to any class or series;
- (3) whether or not the shares of any class or series shall be redeemable and if redeemable the redemption price or prices, and the time or times at which and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;
- (4) whether or not the shares of a class or series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and if such retirement or sinking fund or funds be established, the annual amount thereof and the terms and provisions relative to the operation thereof;
- (5) the dividend rate, whether dividends are payable in cash, stock of the corporation, or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of the dividends payable on any other class or classes or series of stock, whether or not such dividend shall be cumulative or noncumulative, and if cumulative, the date or dates from which such dividends shall accumulate;
- (6) whether or not the shares of any class or series shall be convertible into, or exchangeable for, the shares of any other class or classes or of any other series of the same of any other class or classes of stock of the corporation and the conversion price or prices or ratio or ratios or the rate or rates at which such conversion or exchange may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions; and
- (7) such other special rights and protective provisions with respect to any class or series as the Board of Directors may deem advisable.

The shares of each class or series of the Preferred Stock may vary from the shares of any other series thereof in any or all of the foregoing respects. The Board of Directors may increase the

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number of shares of the Preferred Stock designated for any existing class or series by a resolution adding to such class or series authorized and unissued shares of the Preferred Stock not designated for any other class or series. The Board of Directors may decrease the number of shares of the Preferred Stock not designated for any other class or series. The Board of Directors may decrease the number of shares of the Preferred Stock designated for any existing class or series by a resolution, subtracting from such series unissued shares of the Preferred Stock designated for such class or series, and the shares so subtracted shall become authorized, unissued and undesignated shares of the Preferred Stock.

C. Series A Convertible Preferred Stock. 1,888,448 shares of Preferred Stock shall be designated as Series A Convertible Preferred Stock ("Series A") and shall have the following rights and preferences:

(I) Voting.

(a) Except as set forth in Section C(1)(b) hereof, the holders of shares of Series A shall have the same voting rights as, and on an as converted basis vote together with, the holders of Common Stock, as a single class.

(b) The holders of Series A, voting as a single class, shall have the preferential right to:

(i) nominate and elect up to two (2) members of the Board of Directors of the Corporation;

(ii) nominate and elect one (1) member of each compensation and audit committee which the Corporation maintains at any time, with each of such committees to have no more than three (3) members;

(iii) approve, by the affirmative vote of holders of a majority of the issued and outstanding Series A:

(A) any proposed amendment to the Corporation's Articles of Incorporation or Bylaws;

(B) any increase in the size of the Corporation's Board of Directors;

(C) any material change in the primary lines of business of the Corporation;

(D) the declaration or payment of any dividend on the Common Stock (other than a dividend payable solely in shares of Common Stock);

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(E) the adoption of any stock options or other stock incentive plans or grants or any stock options or other incentive awards;

(F) any underwritten public offering of the Corporation, except for a Series A Qualifying IPO (as hereinafter defined);

(G) any merger, consolidation, sale or transfer of all or substantially all of the assets of, or a controlling interest in, the Corporation, unless the fair market value of the consideration for such transaction is at least \$10 per share on an as converted basis;

(H) issuance of any Preferred Stock or other class of stock which is senior to or on parity with the Series A;

(I) any liquidation, winding up or dissolution of the Corporation; and

(J) the Corporation incurring indebtedness to any one person or entity in excess of \$3,000,000.

(2) Conversion.

(a) Voluntary. Each share of Series A shall be convertible, at the election of the holder thereof, into one share of Common Stock, subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof. The holder shall surrender to the Corporation the certificates for Series A shares which are to be converted, duly endorsed in blank for transfer, together with a written request for conversion of the Series A shares into Common Stock.

(b) Automatic. Each share of Series A shall be converted automatically into one share of Common Stock (subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof), upon the happening of any of the following events (each, an "Automatic Conversion Event"):

(i) the consummation of an initial public offering (a "Series A Qualifying IPO") by the Corporation which results in not less than \$25 million of gross proceeds to the Corporation at a per share offering price of at least \$10 per share, as adjusted for any stock-split, dividend or other adjustment occurring after the issuance of the Series A;

(ii) a merger, consolidation or sale of a controlling interest in the Corporation (subject to the rights of the holders of the Series A to approve such merger, consolidation or sale of a controlling interest, pursuant to Section C.(1)(b)(iii) of this Article III); or

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(iii) the approval of the holders of a majority of the Series

A.

The Corporation shall send written notice to each holder of Series A shares within five (5) days after the occurrence of an Automatic Conversion Event. Upon surrender of its certificate representing Series A shares, duly endorsed in blank for transfer, the holder shall be entitled to receive a certificate for the appropriate number of shares of Common Stock.

(3) Dividends. The holders of the Series A shall have dividend rights and preferences set forth in Section E.(3) of this Article III.

(4) Liquidation. The holders of the Series A shares shall have the rights set forth in Section E.(4) of this Article III upon the liquidation, dissolution or winding up of the Corporation.

(5) Redemption. The Series A shares are not redeemable.

(6) Anti-Dilution.

(a) Stock Splits, Dividends, Etc. In the event of the occurrence of an Adjustment Event (as hereinafter defined), the conversion ratio for conversion of Series A shares to Common Stock shall be adjusted in order to prevent dilution of the conversion rights granted in this Article. In such event, the number of shares of Common Stock to be received upon conversion of one share of Series A (the "A Conversion Ratio") shall be adjusted as follows: the number of shares of Common Stock receivable upon conversion of one share of Series A immediately before the Adjustment Event shall be multiplied by a fraction, the numerator of which is the number of shares of Common Stock issued and outstanding immediately after the Adjustment Event, and the denominator of which is the number of shares of Common Stock issued and outstanding immediately before the Adjustment Event.

As used herein, the term "Adjustment Event" means the occurrence of any of the following events:

(i) a stock split or other subdivision of outstanding shares of Common Stock into a greater number of shares, merger, consolidation or other business combination transaction of the Corporation as a result of which the shareholders of the Corporation prior to such event will beneficially own less than 50% of the capital stock of the surviving or resulting entity;

(ii) a reverse stock split or other combination of outstanding shares of Common Stock into a smaller number of shares;

(iii) a distribution of Common Stock with respect to outstanding shares of Common Stock;

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(iv) any other change in the corporate or capital structure of the Corporation which has the effect of diluting or adversely affecting the rights and privileges of the holders of the Series A; or

(v) any other event which, in the opinion of the Board of Directors of the Corporation, does not fall directly within the foregoing definitions of Adjustment Event but should be treated as an Adjustment Event in order to protect the rights of the holders of Series A shares consistently with the essential intent and principles of this Article.

(b) Weighted Average Formula Adjustment.

(i) As used in herein:

"Applicable Issuance" means any issuance or sale of Common Stock by the Corporation other than: (A) up to 2,500,000 shares issued pursuant to the exercise of stock options granted or to be granted under the Corporation's 1995 Employee Stock Option Plan, as Amended and Restated as of May 16, 1998; (B) up to 100,000 shares issued pursuant to the exercise of stock options granted under the Corporation's 1997 Stock Option Plan for Non-Employees; (C) that certain common stock purchase warrant for up to 291,829 shares of Common Stock issued on May 15, 1998; (D) shares issued pursuant to the exercise of any options or warrants approved by the Board of Directors or any committee thereof and issued by the Corporation prior to the issuance of the Series A; (E) shares issued pursuant to the exercise of the conversion rights of other securities; or (F) shares issued in an Adjustment Event.

"A Conversion Price" means \$4.06 per share, divided by the A Conversion Ratio in effect immediately prior to the Applicable Issuance.

"Price" means the amount of consideration per share received by the Corporation in connection with an Applicable Issuance. In the case of non-cash consideration received by the Corporation, the Board of Directors shall determine in good faith the fair market value of such consideration.

(ii) If the Corporation ever issues or sells Common Stock in an Applicable Issuance for a Price per share that is less than the A Conversion Price then in effect, then the A Conversion Price shall be adjusted to that price determined by multiplying the A Conversion Price (as in effect immediately prior to the Applicable Issuance) by a fraction:

(A) the numerator of which is the number of shares of Common Stock outstanding immediately prior to the Applicable Issuance plus the number of shares of Common Stock which the aggregate Price received by the Corporation for the total number of such shares of Common Stock so issued would purchase at the A Conversion Price in effect immediately prior to the Applicable Issuance; and

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(B) the denominator of which is the number of shares of Common Stock outstanding immediately after the Applicable Issuance.

The A Conversion Ratio shall thereafter become \$4.06 divided by the adjusted A Conversion Price determined pursuant to the preceding formula. No adjustment of the A Conversion Price shall be made under this Subsection (b) upon the issuance of any security which is issued pursuant to the exercise of any warrants or subscription or purchase rights therefor, if any adjustment has previously been made in the A Conversion Price then in effect upon the issuance of such warrants or other rights pursuant to Subsection (c) below.

(c) Common Stock Equivalents.

(i) As used in this Subsection (c), the term "Common Stock Equivalent" means any security convertible into, exchangeable or exercisable for Common Stock or any warrant, option or other right to purchase Common Stock or any security convertible into Common Stock. Common Stock Equivalent shall not include the warrant referred to in Section C.6.(b)(i)(c) of this Article III or any option or similar right granted pursuant to the terms of an employee, officer or director stock purchase or stock option plan approved by the Board of Directors or any committee thereof, provided that the total number of shares of Common Stock which may be issued or acquired under all such plans of the Corporation has not exceeded 2,600,000 shares.

(ii) If the Corporation, at any time while any of the Series A shares are outstanding, issues any Common Stock Equivalent and the price per share for which Common Stock may be issuable thereafter upon the exercise or conversion of such Common Stock Equivalent is less than the A Conversion Price then in effect, or if, after any such issuance the price per share for which Common Stock may be issuable thereafter is amended, and such price as so amended is less than the A Conversion Price in effect at the time of such amendment, then the A Conversion Price upon each such issuance or amendment shall be adjusted as provided in Subsection (b) above, on the basis that: (i) the maximum number of shares of Common Stock issuable pursuant to all such Common Stock Equivalents shall be deemed to have been issued on the earlier of: (A) the date on which the Corporation enters into a firm contract for the issuance of such Common Stock Equivalent, or (B) the date of actual issuance of such Common Stock Equivalent; and (ii) the aggregate consideration for such maximum number of shares of Common Stock shall be deemed to be the minimum consideration received and receivable by the Corporation for the issuance of such shares of Common Stock pursuant to such Common Stock Equivalent.

(7) Pre-Emptive Rights. The holders of Series A shares shall have the pre-emptive rights set forth in Section E.(7) of this Article III.

D. Series B Convertible Preferred Stock. 5,000,000 shares of Preferred Stock shall be designated as Series B Convertible Preferred Stock ("Series B") and shall have the following rights and preferences:

(1) Voting.

(a) Except as set forth in Section D.(1)(b) of this Article III, the holders of shares of Series B shall have the same voting rights as, and on an as converted basis vote together with, the holders of Common Stock, as a single class.

(b) The holders of Series B, voting as a single class, shall have the preferential right to:

(i) nominate and elect one (1) member of the Board of Directors of the Corporation, or at the election of the holders of a majority of the issued and outstanding shares of Series B, appoint a non-voting representative to attend all meetings of the Board of Directors of the Corporation and all committees thereof; and

(ii) approve, by the affirmative vote of the holders of 66-2/3 of the issued and outstanding Series B:

(A) any proposed amendment to the Corporation's Articles of Incorporation;

(B) any increase in the size of the Corporation's Board of Directors;

(C) any material change in the primary lines of business of the Corporation;

(D) any underwritten public offering of the Corporation, except for a Series B Qualifying IPO (as hereinafter defined);

(E) any merger, consolidation, sale or transfer of all or substantially all of the assets of, or a controlling interest in, the Corporation;

(F) any liquidation, winding up or dissolution of the Corporation;

(G) issuance of any Preferred Stock or other class of stock which is senior to or on parity with the Series B;

(H) the declaration or payment of any dividend on the Common Stock (other than a dividend payable solely in shares of Common Stock); and

(I) the Corporation incurring indebtedness to any one person or entity in excess of \$3,000,000.

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(2) Conversion.

(a) Voluntary. Each share of Series B shall be convertible, at the election of the holder thereof, into one share of Common Stock, subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof. The holder shall surrender to the Corporation the certificates for Series B shares which are to be converted, duly endorsed in blank for transfer, together with a written request for conversion of the Series B shares into Common Stock.

(b) Automatic. Each share of Series B shall be converted automatically into one share of Common Stock (subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof), upon the happening of any of the following events (each, an "Automatic Conversion Event"):

(i) the consummation of an initial public offering (a "Series B Qualifying IPO") by the Corporation which results in not less than \$25 million of gross proceeds to the Corporation at a per share offering price of at least \$15.42 per share, as adjusted for any stock-split, dividend or other adjustment occurring issuance of the Series B;

(ii) a merger, consolidation or sale of a controlling interest in the Corporation (subject to the rights of the holders of the Series B to approve such merger, consolidation or sale of a controlling interest, pursuant to Section D(1)(b)(ii) of this Article III); or

(iii) the approval of the holders of a majority of the Series

B.

The Corporation shall send written notice to each holder of Series B shares within five (5) days after the occurrence of an Automatic Conversion Event. Upon surrender of its certificate representing Series B shares, duly endorsed in blank for transfer, the holder shall be entitled to receive a certificate for the appropriate number of shares of Common Stock.

(3) Dividends. The holders of the Series B shall have dividend rights and preferences set forth in Section E.(3) of this Article III.

(4) Liquidation. The holders of the Series B shares shall have the rights set forth in Section E.(4) upon the liquidation, dissolution or winding up of the Corporation.

(5) Redemption. At any time after March 31, 2003 and upon ninety (90) days written notice to the Corporation from holders of at least a majority of the Series B shares, the Corporation shall redeem, out of funds legally available for such purpose, all of the then issued and outstanding Series B at the redemption price per share equal to 150 percent of the purchase price originally paid for the Series B shares upon issuance together with any declared but unpaid dividends thereon. Such redemption price per share shall be adjusted to give proper effect to: (i) a stock split

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or other subdivision of outstanding shares of Series B into a greater number of shares; (ii) a reverse stock split or other combination of outstanding shares of Series B into a smaller number of shares; or (iii) a distribution of Series B shares with respect to outstanding shares of Series B. Any shares of Series B that may not legally be redeemed on the date of redemption shall be redeemed by the Corporation promptly after funds become legally available for such purpose. Any shares of Series B redeemed pursuant to this section shall have the status of authorized but unissued shares. The Corporation shall not be obligated to make payments into or to maintain any sinking fund for the redemption of the Series B.

(6) Anti-Dilution.

(a) Stock Splits, Dividends, Etc. In the event of the occurrence of an Adjustment Event (as hereinafter defined), the conversion ratio for conversion of Series B shares to Common Stock shall be adjusted in order to prevent dilution of the conversion rights granted in this Article. In such event, the number of shares of Common Stock to be received upon conversion of one share of Series B (the "B Conversion Ratio") shall be adjusted as follows: the number of shares of Common Stock receivable upon conversion of one share of Series B immediately before the Adjustment Event shall be multiplied by a fraction, the numerator of which is the number of shares of Common Stock issued and outstanding immediately after the Adjustment Event, and the denominator of which is the number of shares of Common Stock issued and outstanding immediately before the Adjustment Event.

As used herein, the term "Adjustment Event" means the occurrence of any of the following events:

(i) a stock split or other subdivision of outstanding shares of Common Stock into a greater number of shares, merger, consolidation or other business combination transaction of the Corporation as a result of which the shareholders of the Corporation prior to such event will beneficially own less than 50% of the capital stock of the surviving or resulting entity;

(ii) a reverse stock split or other combination of outstanding shares of Common Stock into a smaller number of shares;

(iii) a distribution of Common Stock with respect to outstanding shares of Common Stock;

(iv) any other change in the corporate or capital structure of the Corporation which has the effect of diluting or adversely affecting the rights and privileges of the holders of the Series B; or

(v) any other event which, in the opinion of the Board of Directors of the Corporation, does not fall directly within the foregoing definitions of Adjustment Event but should be treated as

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an Adjustment Event in order to protect the rights of the holders of Series B shares consistently with the essential intent and principles of this Article.

(b) Weighted Average Formula Adjustment.

(i) As used in herein:

"Applicable Issuance" means any issuance or sale of Common Stock by the Corporation other than: (A) up to 2,500,000 shares issued pursuant to the exercise of stock options granted under the Corporation's 1995 Employee Stock Option Plan, as Amended and Restated as of May 16, 1998; (B) up to 100,000 shares issued pursuant to the exercise of stock options granted under the Corporation's 1997 Stock Option Plan for Non-Employees; (C) shares issued pursuant to the exercise of any options or warrants approved by the Board of Directors or a committee thereof and issued by the Corporation on or prior to the issuance of the Series B; (D) shares issued pursuant to the exercise of the conversion rights of other securities; or (E) shares issued in an Adjustment Event.

"B Conversion Price" means \$5.14 per share, divided by the B Conversion Ratio in effect immediately prior to the Applicable Issuance.

"Price" means the amount of consideration per share received by the Corporation in connection with an Applicable Issuance. In the case of non-cash consideration received by the Corporation, the Board of Directors shall determine in good faith the fair market value of such consideration.

(ii) If the Corporation ever issues or sells Common Stock in an Applicable Issuance for a Price per share that is less than the B Conversion Price then in effect, then the B Conversion Price shall be adjusted to that price determined by multiplying the B Conversion Price (as in effect immediately prior to the Applicable Issuance) by a fraction:

(A) the numerator of which is the number of shares of Common Stock outstanding immediately prior to the Applicable Issuance plus the number of shares of Common Stock which the aggregate Price received by the Corporation for the total number of such shares of Common Stock so issued would purchase at the B Conversion Price in effect immediately prior to the Applicable Issuance; and

(B) the denominator of which is the number of shares of Common Stock outstanding immediately after the Applicable Issuance.

The B Conversion Ratio shall thereafter become \$5.14 divided by the adjusted B Conversion Price determined pursuant to the preceding formula. No adjustment of the B Conversion Price shall be made under this Subsection (b) upon the issuance of any security which is issued pursuant to the exercise of any warrants or subscription or purchase rights therefor, if any adjustment has previously

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been made in the B Conversion Price then in effect upon the issuance of such warrants or other rights pursuant to Subsection (c) below.

(c) Common Stock Equivalents.

(i) As used in this Subsection (c), the term "Common Stock Equivalent" means any security convertible into, exchangeable or exercisable for Common Stock or any warrant, option or other right to purchase Common Stock or any security convertible into Common Stock. Common Stock Equivalent shall not include any option or similar right granted pursuant to the terms of an employee, officer or director stock purchase or stock option plan approved by the Board of Directors or a committee thereof, provided that the total number of shares of Common Stock which may be issued or acquired under all such plans of the Corporation has not exceeded 2,600,000 shares.

(ii) If the Corporation, at any time while any of the Series B shares are outstanding, issues any Common Stock Equivalent and the price per share for which Common Stock may be issuable thereafter upon the exercise or conversion of such Common Stock Equivalent is less than the B Conversion Price then in effect, or if, after any such issuance the price per share for which Common Stock may be issuable thereafter is amended, and such price as so amended is less than the B Conversion Price in effect at the time of such amendment, then the B Conversion Price upon each such issuance or amendment shall be adjusted as provided in Subsection (b) above, on the basis that: (i) the maximum number of shares of Common Stock issuable pursuant to all such Common Stock Equivalents shall be deemed to have been issued on the earlier of: (A) the date on which the Corporation enters into a firm contract for the issuance of such Common Stock Equivalent, or (B) the date of actual issuance of such Common Stock Equivalent; and (ii) the aggregate consideration for such maximum number of shares of Common Stock shall be deemed to be the minimum consideration received and receivable by the Corporation for the issuance of such shares of Common Stock pursuant to such Common Stock Equivalent.

(7) Pre-Emptive Rights. The holders of Series B shares shall have the pre-emptive rights set forth in Section E.(7) of this Article III.

E. Series C Convertible Preferred Stock. 5,000,000 shares of Preferred Stock shall be designated as Series C Convertible Preferred Stock ("Series C") and shall have the following rights and preferences:

(1) Voting.

(a) Except as set forth in Section E.(1)(b) of this Article III, the holders of shares of Series C shall have the same voting rights as, and on an as converted basis vote together with, the holders of Common Stock, as a single class.

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(b) The holders of Series C, voting as a single class, shall have the preferential right to approve, by the affirmative vote of the holders of more than 50% of the issued and outstanding Series C:

- (i) any proposed amendment to the Corporation's Articles of Incorporation or Bylaws;
- (ii) any increase in the size of the Corporation's Board of Directors;
- (iii) any material change in the primary lines of business of the Corporation;
- (iv) the adoption of any stock options or other stock incentive plans or grants or any stock options or other incentive awards;
- (v) any underwritten public offering of the Corporation, except for a Series C Qualifying IPO (as hereinafter defined);
- (vi) the reclassification of any outstanding shares into shares having preference or priority as to dividends or assets senior to or on parity with the Series C;
- (vii) any merger, consolidation, sale or transfer of all or substantially all of the assets of, or a controlling interest in, the Corporation;
- (viii) any liquidation, winding up or dissolution of the Corporation;
- (ix) issuance of any Preferred Stock or other class of stock which is senior to or on parity with the Series C;
- (x) the declaration or payment of any dividend on the Common Stock (other than a dividend payable solely in shares of Common Stock); and
- (xi) the Corporation incurring indebtedness to any one person or entity in excess of \$3,000,000.

(2) Conversion.

(a) Voluntary. Each share of Series C shall be convertible, at the election of the holder thereof, into one share of Common Stock, subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof. The holder shall surrender to the Corporation the certificates for Series C shares which are to be converted, duly endorsed in blank for transfer, together with a written request for conversion of the Series C shares into Common Stock.

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(b) **Automatic.** Each share of Series C shall be converted automatically into one share of Common Stock (subject to adjustment in accordance with the anti-dilution rights granted in Subsection (6) hereof), upon the happening of any of the following events (each, an "Automatic Conversion Event"):

(i) upon the consummation of an initial public offering of the Corporation's Common Stock which results in not less than \$25 million of gross proceeds to the Corporation at a per share offering price of at least \$15.90 per share (the "Series C Qualifying IPO"), as adjusted for any stock-split, dividend or other adjustment occurring after the issuance of the Series C;

(ii) a merger, consolidation or sale of a controlling interest in the Corporation (subject to the rights of the holders of the Series C to approve such merger, consolidation or sale of a controlling interest, pursuant to Section E(1)(b)(ii) of this Article III); or

(iii) the approval of the holders of a majority of the Series C.

The Corporation shall send written notice to each holder of Series C shares within five (5) days after the occurrence of an Automatic Conversion Event. Upon surrender of its certificate representing Series B shares, duly endorsed in blank for transfer, the holder shall be entitled to receive a certificate for the appropriate number of shares of Common Stock.

(3) **Dividends.**

(a) **Cash.** The holders of shares of Series A, Series B and Series C shall be entitled to dividends when and if declared by the Board of Directors. The annual amount of such preferential dividend, if any, to be paid to each holder of the Series A, Series B and Series C shall be equal to ten percent (10%) of the purchase price paid such holder to acquire his or her shares of Series A, Series B and/or Series C ("Preferential Dividend"). The Preferential Dividend, if any, is not cumulative. The Preferential Dividend shall be paid to the holders of the Series A, Series B and Series C before any dividend is paid or declared on the Common Stock or any other class or series of Common Stock or Preferred Stock. After the Preferential Dividend has been paid, any further dividend shall be paid, on a fully converted and pro-rata basis, to the holders of the Common Stock, the Series A, the Series B, the Series C and any other series of Preferred Stock.

(b) **Non-Cash.** When and if declared by the Board of Directors, the holders of the Series A, Series B, and Series C shall be entitled to share equally, on a fully converted and pro rata basis, in any non-cash dividend or distribution.

(4) **Liquidation.** Upon the liquidation, dissolution or winding up of the Corporation, a holder of shares of Series A, Series B or Series C shall be entitled to receive a payment equal to the purchase price originally paid for the Series A, Series B or Series C shares upon issuance together with any declared but unpaid dividends thereon (the "Preference Amount"), before any payment is made to the holders of the Common Stock. After such payment has been made to

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the holders of Series A, Series B and Series C shares, any remaining assets of the Corporation shall be distributed to the holders of shares of Common Stock, Series A, Series B and Series C on a fully converted and pro rata basis. In the event that the Corporation does not have sufficient assets to permit payment of the Preference Amount in full to all holders of the Series A, Series B and Series C, then the assets of the Corporation shall be distributed to the holders of the Series A, Series B and Series C in proportion to the Preference Amount each such holder would otherwise be entitled to receive.

Unless otherwise waived by a majority in interest of the Series A, voting as a class, the Series B, voting as a class, and Series C, voting as a class, a merger or consolidation of the Corporation in which the shareholders of the Corporation prior to such merger or consolidation do not retain a majority of the voting power of the surviving corporation, or a sale or transfer of all or substantially all of the Corporation's assets shall, solely for purposes of the first sentence of this Section B(4) of Article III, be deemed to be a liquidation, dissolution and winding up of the Corporation.

(5) Redemption. At any time after March 31, 2003 and upon ninety (90) days written notice to the Corporation from holders of at least a majority of the Series C shares, the Corporation shall redeem, out of funds legally available for such purpose, all of the then issued and outstanding Series C at the redemption price per share equal to 150 percent of the purchase price originally paid for the Series C shares upon issuance together with any declared but unpaid dividends thereon. Such redemption price per share shall be adjusted to give proper effect to: (i) a stock split or other subdivision of outstanding shares of Series C into a greater number of shares; (ii) a reverse stock split or other combination of outstanding shares of Series C into a smaller number of shares; or (iii) a distribution of Series C shares with respect to outstanding shares of Series C. Any shares of Series C that may not legally be redeemed on the date of redemption shall be redeemed by the Corporation promptly after funds become legally available for such purpose. Any shares of Series C redeemed pursuant to this section shall have the status of authorized but unissued shares. The Corporation shall not be obligated to make payments into or to maintain any sinking fund for the redemption of the Series C.

(6) Anti-Dilution.

(a) Stock Splits, Dividends, Etc. In the event of the occurrence of an Adjustment Event (as hereinafter defined), the conversion ratio for conversion of Series C shares to Common Stock shall be adjusted in order to prevent dilution of the conversion rights granted in this Article. In such event, the number of shares of Common Stock to be received upon conversion of one share of Series C (the "C Conversion Ratio") shall be adjusted as follows: the number of shares of Common Stock receivable upon conversion of one share of Series C immediately before the Adjustment Event shall be multiplied by a fraction, the numerator of which is the number of shares of Common Stock issued and outstanding immediately after the Adjustment Event, and the denominator of which is the number of shares of Common Stock issued and outstanding immediately before the Adjustment Event.

As used herein, the term "Adjustment Event" means the occurrence of any of the following events:

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(i) a stock split or other subdivision of outstanding shares of Common Stock into a greater number of shares, merger, consolidation or other business combination transaction of the Corporation as a result of which the shareholders of the Corporation prior to such event will beneficially own less than 50% of the capital stock of the surviving entity;

(ii) a reverse stock split or other combination of outstanding shares of Common Stock into a smaller number of shares;

(iii) a distribution of Common Stock with respect to outstanding shares of Common Stock;

(iv) any other change in the corporate or capital structure of the Corporation which has the effect of diluting or adversely affecting the rights and privileges of the holders of the Series C; or

(v) any other event which, in the opinion of the Board of Directors of the Corporation, does not fall directly within the foregoing definitions of Adjustment Event but should be treated as an Adjustment Event in order to protect the rights of the holders of Series C shares consistently with the essential intent and principles of this Article.

(b) Full Ratchet Adjustment.

(i) As used in herein:

"Applicable Issuance" means any issuance or sale of Common Stock by the Corporation other than: (A) up to 2,500,000 shares issued pursuant to the exercise of stock options granted under the Corporation's 1995 Employee Stock Option Plan, as Amended and Restated on May 16, 1998; (B) up to 100,000 shares issued pursuant to the exercise of stock options granted under the Corporation's 1997 Stock Option Plan for Non-Employees; (C) shares issued pursuant to the exercise of any options or warrants approved by the Board of Directors or a committee thereof and issued by the Corporation on or prior to the issuance of the Series C; (D) shares issued pursuant to the exercise of the conversion rights of other securities issued by the Corporation on or prior to the issuance of the Series C; or (E) shares issued in an Adjustment Event.

"C Conversion Price" means \$5.30 per share, divided by the C Conversion Ratio in effect immediately prior to the Applicable Issuance.

"Price" means the amount of consideration per share received by the Corporation in connection with an Applicable Issuance. In the case of non-cash consideration received by the Corporation, the Board of Directors shall determine in good faith the fair market value of such consideration.

(ii) If the Corporation ever issues or sells Common Stock in an Applicable Issuance for no consideration or for a Price per share that is less than the C Conversion Price then in effect on the date of and immediately prior to such issue, then the C

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Conversion Price shall be reduced, concurrently with such issue, to the Price per share received by the Corporation for the issue of the Common Stock.

(c) Common Stock Equivalents.

(i) As used in this Subsection (c), the term "Common Stock Equivalent" means any security convertible into, exchangeable or exercisable for Common Stock or any warrant, option or other right to purchase Common Stock or any security convertible into or exchangeable for Common Stock. Common Stock Equivalent shall not include any option or similar right granted pursuant to the terms of an employee, officer or director stock purchase or stock option plan approved by the Board of Directors or a committee thereof, provided that the total number of shares of Common Stock which may be issued or acquired under all such plans of the Corporation has not exceeded 2,600,000 shares.

(ii) If the Corporation, at any time while any of the Series C shares are outstanding, issues any Common Stock Equivalent and the price per share for which Common Stock may be issuable thereafter upon the exercise or conversion of such Common Stock Equivalent is less than the C Conversion Price then in effect, or if, after any such issuance the price per share for which Common Stock may be issuable thereafter is amended, and such price as so amended is less than the C Conversion Price in effect at the time of such amendment, then the C Conversion Price upon each such issuance or amendment shall be adjusted as provided in Subsection (b) above, on the basis that: (i) the maximum number of shares of Common Stock issuable pursuant to all such Common Stock Equivalents shall be deemed to have been issued on the earlier of: (A) the date on which the Corporation enters into a firm contract for the issuance of such Common Stock Equivalent, or (B) the date of actual issuance of such Common Stock Equivalent; and (ii) the aggregate consideration for such maximum number of shares of Common Stock shall be deemed to be the minimum consideration received and receivable by the Corporation for the issuance of such shares of Common Stock pursuant to such Common Stock Equivalent.

(7) Pre-Emptive Rights.

(a) Holders of Series A, Series B and Series C shares shall have the pre-emptive right to acquire shares of any class of stock of the Corporation proposed to be sold by the Corporation ("Shares") upon the terms and conditions set forth in this Subsection (7).

(b) Upon the sale by the Corporation, for cash or other consideration of any Shares, each holder of Series A, Series B and Series C shares shall have the pre-emptive right, within the time (not to be less than ten (10) days) and on the terms fixed by the Corporation, subject to the provision of this Article III, to purchase such Shares, not to exceed the same proportion thereof as: (i) the number of shares of Common Stock that the Series A, Series B and Series C shares held by such holder are convertible into on a record date ("Record Date") established by the Board of Directors bears to (ii) the total number of shares of Common Stock outstanding on the Record Date. For purposes of clarification, the pre-emptive rights granted hereunder shall not be applicable to the issuance of shares in the Corporation's initial public offering if such offering would result in the automatic conversion to the Series A, Series B and/or Series C shares.

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(c) If one or more holders of Series A, Series B and Series C shares ("Exercising Holders") exercise the pre-emptive rights pursuant to Section E(7)(b) of this Article III, and one or more such holders ("Non-Exercising Holders") do not exercise such pre-emptive rights, the Shares that the Non-Exercising Holders ("Additional Shares") declined to acquire shall be offered to the Exercising Holders on a pro rata fully converted basis determined as of the Record Date. Within five (5) days of receipt of notice from the Corporation, an Exercising Holder shall advise the Corporation of the number of Additional Shares to be acquired by the Exercising Holder pursuant to this Section E(7)(c) of this Article III.

(d) The pre-emptive rights granted hereunder shall not be applicable to the issuance of shares of stock of any class pursuant to: (i) the exercise or conversion of options, warrants, notes or other rights to purchase such stock issued and outstanding as of the date of the Corporation's Second Amended and Restated Articles of Incorporation including, without limitation, those certain warrants issued to one person and three entities in connection with the conversion of certain convertible promissory notes and to one entity in connection with the purchase of the Series C Preferred; and (ii) the exercise of employee stock options pursuant to an employee stock option plan duly approved by the Corporation's Board of Directors or a committee thereof. Notwithstanding clause (d)(i) above, a holder of the Series A shall be entitled to exercise his, her or its preemptive rights in full with respect to the exercise of any option or warrant that was issued by the Corporation prior to May 15, 1998 but after such holder acquired the Series A. Furthermore, shares of stock shall not be subject to pre-emptive rights if they are: (i) issued pursuant to a plan adjusting any rights to fractional shares or fractional interests in order to prevent the issuance of fractional shares; (ii) issued in connection with any stock dividend, stock split or similar adjustment in respect to stock; (iii) issued in connection with a merger, consolidation, acquisition of all or substantially all of the assets or shares of beneficial interest of any entity, or pursuant to an order of a court of competent jurisdiction unless such order provides otherwise; or (iv) released from such pre-emptive rights by the written consent of the holders of all of the Series A, Series B and Series C shares then outstanding.

(e) Whenever any pre-emptive rights for Shares have not been exercised by the holders of Series A, Series B and Series C shares, and by the terms of such offer, such pre-emptive rights have ceased to be exercisable, the Corporation may authorize the disposal of the Shares previously subject to such unexercised rights at the same price offered pursuant to the pre-emptive rights.

8. First Qualified Public Offering.

(a) Right of First Refusal. Subject to the limitations set forth in this Section 8 and notwithstanding Section 7(b) hereof, the Corporation hereby grants to holders of Series C a right of first refusal to purchase such holder's Proportionate Share (as defined below) of the shares of Common Stock from the shares of Common Stock to be issued at the closing of the Corporation's Series C Qualifying IPO. The price per share of Common Stock which each such holder becomes entitled to purchase by reason hereof shall be the public offering price per share of Common Stock in the Series C Qualifying IPO (the "Offering Price"). The "Proportionate Share"

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for each such holder shall be that number of shares of the Common Stock to be issued in the Series C Qualifying IPO necessary so that, after giving effect to such issuance, such holder will continue to maintain its same proportionate equity ownership in the Corporation, as of the date immediately prior to the effective date of the registration statement covering such Series C Qualifying IPO.

(b) **Limitations.** Subject to the limitations set forth in the following sentence, the "Proportionate Share" for each such holder shall be that number of shares of the Common Stock to be issued in the Series C Qualifying IPO necessary so that, after giving effect to such issuance, such holder will continue to maintain its same proportionate equity ownership in the Corporation, as of the date immediately prior to the effective date of the registration statement covering such Series C Qualifying IPO. Notwithstanding the foregoing sentence, the managing underwriter of such offering shall be entitled to reduce in whole or in part the Proportionate Share to the extent determined necessary by the managing underwriter, in its sole discretion after a reasoned review, to the success of such offering (including without limitation that the proposed purchase by the holders of Series C of their Proportionate Share would materially and adversely affect the offering price and the likelihood of completion) for reasons set forth in writing to the holders no less than five days prior to the anticipated effective date of the registration statement covering such offering, provided, however, that (i) such Proportionate Share, in the aggregate for all holders of Series C Preferred shall not be reduced below 10% of the number of shares of Common Stock issued by the Corporation in the Series C Qualifying IPO (exclusive of the number of shares of Common Stock issued pursuant to any underwriter's over-allotment option), and (ii) the number of shares of Common Stock issued by the Corporation in the Series C Qualified IPO which are Directed Shares (as defined below) shall not exceed an amount equal to 5% of the total number of shares of Common Stock issued by the Corporation in the Series C Qualifying IPO (exclusive of the number of shares of Common Stock issued pursuant to any underwriter's over-allotment option) reduced by the same percentage as the Proportionate Share is reduced. For purposes of this paragraph (b), Directed Shares shall mean "directed shares", "friends of the Corporation" shares or other shares that are directed by the underwriters to employees, customers or other contacts of the Corporation or to retail accounts of the underwriters in "spinning" transactions. Any reduction (in whole or in part) in any holder's Proportionate Share shall be *pro rata* among the holders expressing an interest in purchasing shares at the Offering Price in the Series C Qualifying IPO (the "IPO Purchasers") based upon the number of shares of Series C then held by the IPO Purchasers.

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ARTICLE IV

INITIAL BOARD OF DIRECTORS

The corporation shall have one director initially. The number of directors may be either increased or diminished from time to time as provided in the bylaws but shall never be less than one. The name and address of the initial director of this corporation is:

**STEWART PADVEEN
5201 Congress Avenue
Boca Raton, Florida 33487**

ARTICLE V

REGISTERED AGENT

The name and street address of the initial registered agent of the corporation shall be:

**JEFFREY G. KLEIN
Suite 270
2600 North Military Trail
Boca Raton, Florida 33431**

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TERM OF EXISTENCE

This corporation is to exist perpetually.

ARTICLE VI

INCORPORATOR

The name and address of the incorporator to these Articles of Incorporation is:

JEFFREY G. KLEIN, ESQUIRE
Suite 270
2600 North Military Trail
Boca Raton, Florida 33431

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment and Restatement as of the 7th day of July, 1999.

HOTOFFICE TECHNOLOGIES, INC.

By: *[Signature]*

Title: CHAIRMAN & CEO
Name: R. Michael Franz

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 7th day of July 1999 by *[Signature]* personally known to me or has produced *[Signature]* as identification and did take an oath.



MICHAEL R. MOORE
COMMISSION # CC 654432
EXPIRES JUL 16, 2001
BONDED THROUGH
ATLANTIC BONDING CO., INC.

[Signature]
NOTARY PUBLIC

MICHAEL R. MOORE
Type or Print Name

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