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FLORIDA DEPARTMENT OF STATE

BASIC AMENDMENT

FIREFLY TECHNOLOGIES, INC.

Certificate of Status	1
Certified Copy	1
Page Count	11
Estimated Charge	\$52.50

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Amendment

12/03/04

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**SECOND ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
FIREFLY TECHNOLOGIES, INC.**

These Second Articles of Amendment to Articles of Incorporation of FireFly Technologies, Inc., a corporation organized and existing under the laws of the State of Florida (the "**Corporation**"), were duly approved and adopted by the Corporation pursuant to Sections 607.0704 and 607.0821 of the Florida Business Corporation Act by a written consent of the directors of the Corporation dated as of November 30, 2004 and a written consent of shareholders of the Corporation dated as of November 30, 2004, to be effective upon filing with the Florida Department of State. The number of votes cast for the amendment by the shareholders as a single class and by the holders of Common Stock and Series A Preferred Stock each as a separate class was sufficient for approval.

**FIRST:** The Corporation's name is: **FireFly Technologies, Inc.**

**SECOND:** Article IV (Capital Stock) of the Corporation's Articles of Incorporation, as amended, is amended and restated in its entirety as follows:

**ARTICLE IV**

**Capital Stock**

**A. Generally**

The authorized capital stock of the Corporation will be as follows:

<u>Class of Stock</u>	<u>No. of Authorized Shares</u>	<u>Par Value</u>
Common Stock	20,000,000	\$0.000
Series A Preferred Stock	10,000,000	\$0.001

**B. Designations.**

Subject to the limitations and provisions set forth in these Articles of Incorporation, the Preferred Stock may be issued from time to time by the Board of Directors as shares of one or more series. The description of shares of Series A Preferred Stock are as set forth in Section C of this Article IV. The description of shares of each other series of Preferred Stock, including any

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preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption, shall be as set forth in resolutions adopted by the Board of Directors, and articles of amendment shall be filed with the Florida Secretary of State as required by law to be filed with respect to issuance of such Preferred Stock, prior to the issuance of any shares of such series.

Subject to the limitations and provisions set forth in these Articles of Incorporation, the Board of Directors is expressly authorized, at any time, by adopting resolutions providing for the issuance of, or providing for a change in the number of, shares of any particular series of Preferred Stock (other than the Series A Preferred Stock) and, if and to the extent from time to time required by law, by filing articles of amendment which are effective without shareholder action: (i) to increase or decrease the number of shares included in each series of Preferred Stock (other than the Series A Preferred Stock), or (ii) to establish in any one or more respects the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms and conditions of redemption relating to the shares of each such series. Notwithstanding the foregoing, the Board of Directors shall not be authorized to change the right of holders of the Common Stock of the Corporation to vote one vote per share on all matters submitted for shareholder action. Without limiting the generality of the foregoing, the authority of the Board of Directors with respect to each series of Preferred Stock (other than the Series A Preferred Stock) shall include, but not be limited to, establishment of the following:

(a) the number of shares constituting that series and the distinctive designation of that series;

(b) the annual dividend rate, if any, on shares of such series, the times of payment and the date from which dividends shall be accumulated, if dividends are to be cumulative;

(c) whether the shares of such series shall be redeemable and, if so, the redemption price and the terms and conditions of such redemption;

(d) the obligation, if any, of the Corporation to redeem shares of such series pursuant to a sinking fund;

(e) whether shares of such series shall be convertible into, or exchangeable for, shares of stock of any other class or classes and, if so, the terms and conditions of such conversion or exchange, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(f) whether the shares of such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the extent of such voting rights;

(g) the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding-up of the Corporation; and

(h) any other relative rights, powers, preferences, qualifications, limitations or restrictions thereof relating to the series.

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In accordance with Section 607.0602, Florida Statutes, the Board of Directors shall determine all of the preferences, limitations, and relative rights for each series of Preferred Stock before the issuance of any shares of that series. The shares of Preferred Stock of any one series shall be identical with each other in such series in all respects except as to the dates from and after which dividends thereon shall cumulate, if cumulative.

### C. Series A Preferred Stock and Common Stock

1. **Dividends.** The Corporation shall pay, when as and if declared by the Board, dividends on a *pari passu* basis to the holders of record (the "Series A Holders") of the outstanding shares of Series A Preferred Stock (on an as-converted to shares of Common Stock basis) and the holders of record of the outstanding shares of Common Stock (the "Common Holders").

2. **Preference on Liquidation.**

(a) **Series A Preferred Stock.** If the Corporation liquidates, dissolves, or winds up its affairs (voluntarily or involuntarily) (a "Liquidation Event"), the Series A Holders shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of all other shares of the Corporation's capital stock by reason of their ownership thereof, an amount per share equal to \$0.001 (the "Series A Liquidation Preference"). If upon the occurrence of a Liquidation Event, the assets and funds to be distributed among the Series A Holders shall be insufficient to permit the payment to such holders of the full amount of their respective Series A Liquidation Preference, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the Series A Holders in proportion to the full Series A Liquidation Preferences the holders would otherwise be entitled to receive.

(b) **Common Stock on an As Converted Basis.** Upon completion of the distributions required pursuant to Section 2(a), the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the Series A Holders and the Common Holders pro rata based on the number of shares of Common Stock held (or deemed held) by each (based upon the number of shares of Common Stock which such Series A Preferred Stock could be converted into pursuant to the provisions of Section 3 immediately prior to such Liquidation Event).

3. **Conversion.**

(a) **Conversion to Common Stock.** Subject to the terms and conditions of this Section 3 (including, without limitation, the adjustment provisions of Section 3(c)), from the time of initial issuance of the Series A Preferred Stock, each share of Series A Preferred Stock is convertible by its holder into one share of Common Stock. The amount of Common Stock into which each share of Series A Preferred Stock is convertible is subject to increase (but not decrease) pursuant to Section 3 of these Articles of Incorporation. Each Series A Holder may, at the holder's option, at any time and from time to time, convert any or all of its shares of Series A

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Preferred Stock into the number of fully paid and non-assessable shares of Common Stock as is determined pursuant to this Section 3.

(b) **Mechanics of Conversion.** A Series A Holder may exercise the conversion right specified in Section 3(a) as to all or any part of its Series A Preferred Stock by surrendering to the Corporation (or to another person designated by the Board of Directors) the certificates evidencing the shares it elects to convert, endorsed and assigned to the Corporation in blank, and accompanied by written notice confirming the holder's exercise of its conversion option as to all or a specified portion of the shares evidenced by the certificates. Conversion of shares of Series A Preferred Stock to Common Stock will be effective when the holder delivers to the Corporation notice of its election to convert and certificates evidencing the converted shares (the "Conversion Date"). As promptly as practicable after the Conversion Date and in any event within five (5) days after surrender of the certificate or certificates representing converted shares of Series A Preferred Stock, the Corporation will issue and deliver, or cause to be issued or delivered, at its expense to a converting holder, a certificate evidencing the number of whole shares of Common Stock to which such holder is entitled. The person in whose name the certificate or certificates for Common Stock are to be issued will be deemed the holder of such Common Stock as of the close of business on the Conversion Date. On conversion of only a portion of the number of shares evidenced by a certificate surrendered for conversion, the Corporation will issue and deliver at its expense to the converting holder a new certificate for the number of shares of Series A Preferred Stock evidencing the unconverted portion of the surrendered certificate. At the close of business on the Conversion Date, (1) the converted shares of Series A Preferred Stock will cease to be outstanding, (2) the holders of the converted shares will cease to have any further rights with respect to those shares, except to receive Common Stock and cash (as specified below) with respect to the converted shares, and (3) the holders of the converted shares will be deemed to have become the holder of the Common Stock for all purposes.

(c) **Adjustments.**

(1) **Adjustments for Subdivisions, Combinations, or Consolidation of Common Stock.** In case the Corporation should at any time or from time to time (i) make a distribution on the shares of Common Stock in shares, (ii) split or subdivide the outstanding shares of Common Stock or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, the shares of Series A Preferred Stock outstanding at the time of the record date of such distribution or the effective date of such split, subdivision or combination shall thereafter entitle the Series A Holder to own or receive the aggregate number and kind of shares that, if such Series A Preferred Stock had been exercised immediately prior to such time, such holder would have owned or have become entitled to receive by virtue of such distribution, split, subdivision or combination. Such adjustment shall be made successively whenever any event listed above shall occur.

(2) **Series A Preferred Stock Adjustment Upon Issuance of Additional Stock.** In case the Corporation at any time during the Adjustment Period (as defined below) issues or sells (or pursuant to Section 3(c)(4) is deemed to issue or sell) any

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Additional Stock (as defined below), each share of Series A Preferred Stock outstanding at the time of the record date of such issuance or sale shall thereafter be convertible into the number of shares of Common Stock that would cause such share of Series A Preferred Stock to represent the same percentage equity ownership of the Corporation (determined on an as-converted to Common Stock basis) that such share of Series A Preferred Stock represented immediately before the Corporation's issuance or sale of Additional Stock. Such adjustment shall be made successively whenever the Corporation issues any Additional Stock.

(3) Definitions. For purposes of these Articles of Incorporation, the following terms have the meanings specified below:

(i) "Additional Stock" means any shares of Common Stock issued or sold (or deemed to have been issued or sold pursuant to Section 3(c)(4)) by the Corporation other than: (i) Common Stock issued pursuant to a transaction described in Section 3(c)(1) for which an appropriate adjustment is made in accordance with Section 3(c)(1), (ii) Common Stock issued upon conversion of Series A Preferred Stock or (iii) Series A Preferred Stock issued pursuant to the Investment Agreement.

(ii) "Adjustment Period" means the period beginning November 1, 2004 and ending on the first day when the Corporation has paid in full all amounts due under the Secured Debt, Unsecured Debt and Promissory Notes (each as defined in the Investment Agreement).

(iii) "Investment Agreement" that certain Investment Agreement dated as of November 12, 2003, among the Corporation, Barclay Venture Partners, LLC, a Florida limited liability company and the other parties executing a signature page to that agreement.

(4) Issuance of Convertible Securities. In case the Corporation in any manner grants, issues or sells (whether directly or by assumption in a merger or otherwise) any (i) options to purchase or rights to subscribe for Common Stock, (ii) securities which by their terms are convertible into or exchangeable for Common Stock (including, without limitation, warrants to purchase Common Stock) or (iii) options to purchase or rights to subscribe for such convertible or exchangeable securities (collectively, "Additional Securities"), then the maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of such Additional Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of grant, issue or sale of such Additional Securities. In the event of any change in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of such Additional Securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the adjustment applicable to any outstanding shares of Series A Preferred Stock with respect to such Additional Securities shall be recomputed to reflect such change, but no further adjustment shall be made with respect to the actual issuance of Common Stock upon the exercise, conversion or exchange of any such Additional Securities.

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(d) **Reservation of Stock Issuable Upon Conversion.** The Corporation will reserve out of its authorized but unissued Common Stock, solely for the purposes of effecting the conversion of the Series A Preferred Stock, the number of shares of Common Stock issuable on conversion of all outstanding Series A Preferred Stock. The Common Holders do not have any preemptive right to purchase these reserved shares. If at any time the number of authorized but unissued shares of Common Stock are not sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to such other remedies as are available to the Series A Holders, the corporation shall take the corporate action that in the opinion of its counsel is necessary to increase its authorized but unissued shares of Common Stock to the number of shares that are sufficient for those purposes, including engaging in its best efforts to secure the requisite shareholder approval of any needed amendment to these Articles of Incorporation.

(e) **Payment of Taxes.** The Corporation will pay any and all taxes, documentary or otherwise, that are payable with respect to the issuance or delivery of Common Stock on conversion of the Series A Preferred Stock. The Corporation will not, however, be required to pay tax with respect to a transfer involved in the issue or transfer and delivery of shares of Common Stock in a name other than the record name of the converted Series A Preferred Stock, and no issuance or delivery will be made unless and until the person requesting such issue pays to the Corporation the amount of any such tax or establishes to the Corporation's satisfaction payment of the tax or that no tax is due. In no event need the Corporation pay or reimburse a registered holder for any income tax or ad valorem tax payable by the holder because of the issuance of Common Stock on conversion of Series A Preferred Stock.

(f) **No Reissuance of Series A Preferred Stock.** The Corporation will cancel shares of Series A Preferred Stock converted pursuant to this Section 3.

(g) **Adjustments for Merger, Consolidation, etc.** In the case of any classification, reclassification, or other reorganization of the Corporation's capital stock, or in the case of the merger or consolidation of the Corporation with or into another corporation, or the conveyance to another corporation of all or any major portion of the Corporation's assets, then, as part of the classification, reclassification, merger, consolidation, or conveyance, adequate provision will be made for each holder of Series A Preferred Stock, on exercise of its conversion privilege, to receive on the same basis and conditions set forth in this Section 3 with respect to the Common Stock, the stock, securities, or other property that the holder would have been entitled to receive on such classification, reclassification, merger, consolidation, or conveyance, if the holder had exercised the conversion privilege immediately before the classification, reclassification, merger, consolidation, or conveyance, and in any such case appropriate provision will be made with respect to the rights and interests of the holder to the end that the provisions of this Section 3 will be applicable to the shares of stock, securities, or other property deliverable on the exercise of the conversion privilege; and, as a condition of any consolidation, merger, or conveyance, any corporation that succeeds to the Corporation by reason of the merger, consolidation or conveyance will assume the obligation to deliver, on exercise of the conversion

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privilege, the shares of stock, securities or other considerations that the holders of the Series A Preferred Stock are entitled to receive pursuant to this Section 3.

(h) **No Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(i) **Certificate as to Adjustment.** Upon the occurrence of each event giving rise to an adjustment or readjustment in the number or kind of shares into which the Series A Preferred Stock is convertible, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms of these Articles of Incorporation and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

4. **Voting.** In addition to its voting rights specially provided for in these articles or granted by applicable law, each Series A Holder will be entitled to voting rights with respect to all matters on which holders of Common Stock have the right to vote. Each Series A Holder may vote that number of votes equal to the number of whole shares of Common Stock into which the holder's shares of Series A Preferred Stock would be convertible pursuant to the provisions of Section 3 as of the record date for the determination of shareholders entitled to vote on the matter. Each Series A Holder's votes will be counted together with all other shares of capital stock having general voting powers and not separately as a class, except as otherwise provided in these articles or by applicable law. In cases in which the holders of shares of Series A Preferred Stock are entitled to approve a matter or vote separately as a class, each Series A Holder will be entitled to one vote for each of its shares and the vote of a majority of the outstanding shares of Series A Preferred Stock will constitute the action of that class.

5. **Authorization of Additional Classes of Shares.** So long as shares of Series A Preferred Stock remain outstanding, the Corporation will not, without the vote or prior written consent of holders of a majority in interest of the then outstanding shares of Series A Preferred Stock, authorize the creation of a new class of shares having dividend rights or liquidation preferences equal or superior to the Series A Preferred Stock, or improve the dividend rights or

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liquidation rights of any other capital stock such that they become equal or superior to the Series A Preferred Stock.

6. **Amendment of Articles of Incorporation.** So long as any shares of the Series A Preferred Stock are outstanding, the Corporation will not, without the affirmative vote of holders of a majority in interest of the Series A Preferred Stock voting together as a separate class, in addition to any other vote, consent, or approval required by law or otherwise, amend the Corporation's Articles of Incorporation or Bylaws in any manner which adversely affects the relative rights and preferences of the Series A Preferred Stock or changes any of the rights, preferences, or interests of the Series A Preferred Stock.

7. **Reissuance of Shares.** Any shares of Series A Preferred Stock redeemed or otherwise reacquired by the Corporation will be canceled and not available for further issuance.

8 **Events of Noncompliance.**

(a) **Definition.** An Event of Noncompliance shall have occurred if either:

(1) the Corporation fails to perform or observe any material obligation, covenant or agreement set forth herein or in the Investment Agreement or the other Investment Documents (as defined in the Investment Agreement). For purposes of this Section 8 the Corporation's failure to make a payment when due (without taking into account any applicable cure period) under any Promissory Note(s) or the Secured Debt (each as defined in the Investment Agreement) automatically shall be deemed an Event of Noncompliance, but the Corporation's failure to make a required payment when due under the Unsecured Debt shall not; or

(2) the Corporation or any corporation of which the Corporation owns 79% or more of the capital stock (a "Subsidiary") makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the Corporation or any Subsidiary bankrupt or insolvent; or any order for relief with respect to the Corporation or any Subsidiary is entered under the Federal Bankruptcy Code; or the Corporation or any Subsidiary petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any Subsidiary or of any substantial part of the assets of the Corporation or any Subsidiary, or commences any proceeding (other than a proceeding for the voluntary liquidation and dissolution of a Subsidiary) relating to the Corporation or any Subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or any such petition or application is filed, or any such proceeding is commenced, against the Corporation or any Subsidiary and either (a) the Corporation or any such Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein or (b) such petition, application or

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proceeding is not dismissed within sixty (60) days.

(b) Consequences of Events of Noncompliance. If an Event of Noncompliance has occurred and continues uncured for fifteen (15) calendar days after written notice to the Board of Directors, the number of directors constituting the Board of Directors shall, at the request of the holders of a majority of the Series A Preferred Stock (the "Requisite Series A Shareholders"), be increased by five (or such other amount required to give the holders of the Series A Preferred Stock a minimum majority of the Board), and the holders of Series A Preferred Stock shall have the special right, voting separately as a single class (with each share of Series A Preferred Stock being entitled to one vote) and to the exclusion of all other classes of the Corporation's stock, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships. The special right of the Requisite Series A Shareholders to elect additional members of the Board may be exercised at the special meeting called pursuant to this subparagraph (b), at any annual or other special meeting of stockholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a stockholders meeting. Such special right shall continue until such time as there is no longer any Event of Noncompliance in existence (which in the case of a failure to make a required payment when due under the Secured Debt or Promissory Note(s) shall be deemed to occur when the Promissory Note(s) have been fully paid), at which time such special right shall terminate subject to revesting upon the occurrence and continuation of any Event of Noncompliance which gives rise to such special right hereunder.

At any time when such special right has vested in the holders of Series A Preferred Stock, a proper officer of the Corporation shall, upon the written request of the Requisite Series A Shareholders then outstanding, addressed to the secretary of the Corporation, call a special meeting of the holders of Series A Preferred Stock for the purpose of electing directors pursuant to this subparagraph. Such meeting shall be held at the earliest legally permissible date at the principal office of the Corporation, or at such other place designated by the Requisite Series A Shareholders. If such meeting has not been called by a proper officer of the Corporation within ten (10) days after personal service of such written request upon the secretary of the Corporation or within twenty (20) days after mailing the same to the secretary of the Corporation at its principal office, then the Requisite Series A Shareholders may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such Person so designated upon the notice required for annual meetings of stockholders and shall be held at the Corporation's principal office, or at such other place designated by the Requisite Series A Shareholders. Any holder of Series A Preferred Stock so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of stockholders to be called pursuant to this subparagraph.

Any director so elected by the holders of Series A Preferred Stock shall continue to serve as a director until the expiration of the lesser of (a) a period of three (3) months following the date on which there is no longer any Event of Noncompliance in

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existence or (b) the remaining period of the full term for which such director has been elected. After the expiration of such three-month period or when the full term for which such director has been elected ceases (provided that the special right to elect directors has terminated), as the case may be, the number of directors constituting the Board of the Corporation shall decrease to such number as constituted the whole Board of the Corporation immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to the special right to elect directors.

(c) If any Event of Noncompliance exists, each holder of Series A Preferred Stock shall also have any other rights and remedies which such holder is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

[Signature page follows]

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HILL WARD HENDERSON

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IN WITNESS WHEREOF, the Corporation has caused these Second Articles of Amendment to Articles of Incorporation to be executed, on this 30 day of November, 2004.

**FIREFLY TECHNOLOGIES, INC.**

By: W. Steve Rector  
Name: W. Steve Rector  
Title: President

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