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AMERA 2800, INC.**

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Amendment

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Corporate Filing Menu

Help

01-31-13

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**ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
AMERA 2800, INC.**

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Pursuant to the provisions of Section 607.1006, *Florida Statutes*, Amera 2800, Inc., a Florida profit corporation, adopts the following Articles of Amendment to its Articles of Incorporation:

1. Article IV of the Articles of Incorporation is hereby modified by changing the definition of "Lender" to "Jefferies LoanCore LLC, a Delaware limited liability company and its successors and assigns" and (ii) "Mortgage Loan" to "in the original principal amount of \$14,500,000.00 incurred in 2013".

2. The following is added as Article XV of this Articles of Incorporation.

"Article XV - SPE Requirements"

The Company shall constitute a Special Purpose Bankruptcy Remote Entity as defined on Exhibit "A" attached hereto which is incorporated herein by reference (the "SPE Requirements"). Any provisions of the SPE Requirements to the contrary notwithstanding, those requirements shall be effective with respect to and applicable to the Company as of the date hereof and shall not have retroactive application. Except as provided in the previous sentence, to the extent that the SPE Requirements differ from or conflict with other provisions of these Articles of the Company the provisions of the SPE Requirements shall control. For purposes of the SPE Requirements, the "Property" means the property described on Exhibit "B" attached hereto and incorporated herein by reference and "Lender" means Jefferies LoanCore LLC, a Delaware limited liability company, its successors and assigns. Neither this Amendment nor the SPE Requirements may be modified in any respect without Lender's prior written consent so long as Lender, its successors or assigns shall hold a mortgage encumbering the Property or any portion thereof.

3. The effective date of this Amendment shall be the 31st day of January, 2013.

4. This amendment was approved by the Board of Directors and the Shareholders of the corporation and number of votes cast for this Amendment were sufficient for approval.

5. All of the other provisions of the Articles of Incorporation filed with the Secretary of State of Florida are hereby ratified and confirmed.

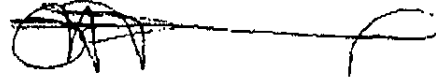
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01-31-'13 14:43 FROM-Michael A. Schroeder 561-241-0798

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IN WITNESS WHEREOF, the undersigned has executed this Amendment to the Articles of Incorporation on this 31st day of January, 2013.



GISELE RAHAEL

Sole Shareholder and Sole Director

Date: 1/31/2013

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EXHIBIT "A"

Schedule 5

Definition of Special Purpose Bankruptcy Remote Entity

(I) A "*Special Purpose Bankruptcy Remote Entity*" means (x) a limited liability company that is a Single Member Bankruptcy Remote LLC or (y) a corporation, limited partnership or limited liability company which at all times since its formation and at all times thereafter

was and will be organized solely for the purpose of (A) owning the Property or (B) acting as a general partner of the limited partnership that owns the Property or member of the limited liability company that owns the Property;

has not engaged and will not engage in any business unrelated to (A) the ownership of the Property, (B) acting as general partner of the limited partnership that owns the Property or (C) acting as a member of the limited liability company that owns the Property, as applicable;

has not had and will not have any assets other than those related to the Property or its partnership or member interest in the limited partnership or limited liability company that owns the Property, as applicable;

has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by this Agreement), transfer of partnership or membership interests or the like, or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable);

if such entity is a limited partnership, has and will have, as its only general partners, Special Purpose Bankruptcy Remote Entities that are corporations;

if such entity is a corporation, has and will have at least one (1) Independent Director, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of its board of directors unless all of the directors and all Independent Directors shall have participated in such vote, and the organizational documents of such entity shall provide that no Independent Director may be removed or replaced without Cause unless such entity provides Lender with not less than three (3) Business Days' prior written notice of (a) any proposed removal of an Independent Director, together with a statement as to the reasons for such removal, and (b) the identity of the proposed replacement Independent Director, together with a certification that such replacement satisfies the requirements set forth in the organizational documents for an Independent Director;

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if such entity is a limited liability company, has and will have at least one member that has been and will be a Special Purpose Bankruptcy Remote Entity that has been and will be a corporation and such corporation is the managing member of such limited liability company;

if such entity is a limited liability company, has and will have articles of organization, a certificate of formation and/or an operating agreement, as applicable, providing that (A) such entity will dissolve only upon the bankruptcy of the managing member, (B) the vote of a majority-in-interest of the remaining members is sufficient to continue the life of the limited liability company in the event of such bankruptcy of the managing member and (C) if the vote of a majority-in-interest of the remaining members to continue the life of the limited liability company following the bankruptcy of the managing member is not obtained, the limited liability company may not liquidate the Property without the consent of the applicable Rating Agencies for as long as the Loan is outstanding;

has not, and without the unanimous consent of all of its partners, directors or members (including all Independent Directors), as applicable, will not, with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's properties, (C) make any assignment for the benefit of such entity's creditors or (D) take any action that might cause such entity to become insolvent;

has remained and intends to remain solvent and has maintained and intends to maintain adequate capital in light of its contemplated business operations;

has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns;

has maintained and will maintain its books, records, resolutions and agreements as official records;

has not commingled and will not commingle its funds or assets with those of any other Person;

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has held and will hold its assets in its own name;

has conducted and will conduct its business in its name,

has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;

has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

has maintained and will maintain an arm's-length relationship with its Affiliates;

(a) if such entity owns the Property, has not and will not have any indebtedness other than Permitted Indebtedness, or (b) if such entity acts as the general partner of a limited partnership which owns the Property, has not and will not have any indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as general partner of the limited partnership which owns the Property which (1) do not exceed, at any time, \$10,000 and (2) are paid within thirty (30) days of the date incurred, or (c) if such entity acts as a managing member of a limited liability company which owns the Property, has and will have no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as a member of the limited liability company which owns the Property which (1) do not exceed, at any time, \$10,000 and (2) are paid within thirty (30) days of the date incurred;

has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Loan;

has not and will not acquire obligations or securities of its partners, members or shareholders;

has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person;

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has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

has not made and will not make loans to any Person;

has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it;

has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

has and will have no obligation to indemnify its partners, officers, directors, members or Special Members, as the case may be, or has such an obligation that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

has and will have an express acknowledgment in its organizational documents that Lender is an intended third-party beneficiary of the "special purpose" provisions of such organizational documents; and

will consider the interests of its creditors in connection with all corporate, partnership or limited liability company actions, as applicable.

(II) **"Single Member Bankruptcy Remote LLC"** means a limited liability company organized under the laws of the State of Delaware which at all times since its formation and at all times thereafter:

was and will be organized solely for the purpose of owning the Property;

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has not engaged and will not engage in any business unrelated to the ownership of the Property;

has not had and will not have any assets other than those related to the Property;

has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by this Agreement), transfer of partnership or membership interests or the like, or amendment of its limited liability company or certificate of formation;

has not, and without the unanimous consent of all of directors (including all Independent Directors), as applicable, will not, with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's properties, (C) make any assignment for the benefit of such entity's creditors or (D) take any action that might cause such entity to become insolvent;

has remained and intends to remain solvent and has maintained and intends to maintain adequate capital in light of its contemplated business operations;

has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

has maintained and will maintain its books, records, resolutions and agreements as official records;

has not commingled and will not commingle its funds or assets with those of any other Person;

has held and will hold its assets in its own name;

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has conducted and will conduct its business in its name,

has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;

has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

has observed and will observe all limited liability company formalities;

has maintained and will maintain an arm's-length relationship with its Affiliates;

has not and will not have any indebtedness other than Permitted Indebtedness;

has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Loan;

has not and will not acquire obligations or securities of its partners, members or shareholders;

has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person;

has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

has not made and will not make loans to any Person;

has not identified and will not identify its members or any Affiliate of any of them, as a division or part of it;

has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less

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favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

has and will have no obligation to indemnify its partners, officers, directors, members or Special Members, as the case may be, or has such an obligation that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

has and will have an express acknowledgment in its organizational documents that Lender is an intended third-party beneficiary of the "special purpose" provisions of such organizational documents;

will consider the interests of its creditors in connection with all limited liability company actions;

has maintained and will maintain its accounts, books and records separate from any other person;

has and will have an operating agreement which provides that the business and affairs of Borrower shall be managed by or under the direction of a board of one or more directors designated by Sole Member, and at all times there shall be at least one (1) duly appointed Independent Director on the board of directors, and the board of directors will not take any action requiring the unanimous affirmative vote of 100% of the members of its board of directors unless, at the time of such action there is at least one (1) member of the board of directors who is an Independent Director, and all of the directors and all Independent Directors shall have participated in such vote;

has and will have an operating agreement which provides that, as long as any portion of the Debt remains outstanding, (A) upon the occurrence of any event that causes Sole Member to cease to be a member of Borrower (other than (x) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents, or (y) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), the person acting as an Independent Director of Borrower shall, without any action of any Person and simultaneously with Sole Member ceasing to be a member of Borrower, automatically be admitted as the sole member of Borrower (the "*Special Member*") and shall preserve and continue the existence of Borrower without dissolution, (B) no Special Member may resign or transfer its rights as Special Member unless (x) a successor Special Member has been admitted to Borrower as a Special Member, and (y) such successor Special Member has also accepted its appointment as an Independent Director, (C) no Independent Director may be removed or replaced without Cause and unless the company provides Lender with not less than three (3) Business Days' prior written notice of (a) any proposed removal of an Independent Director, together with a statement as to the reasons for such removal, and (b) the identity of the proposed replacement Independent Director, together with a certification that such replacement satisfies the requirements set forth in

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the organizational documents for an Independent Director, (D) to the greatest extent permitted by law, except for duties to Borrower (including duties to the members of Borrower solely to the extent of their respective economic interest in Borrower and to Borrower's creditors), such Independent Director shall not owe any fiduciary duties to, and shall not consider, in acting or otherwise voting on any matter for which their approval is required, the interests of (i) the members of Borrower, (ii) other Affiliates of Borrower, or (iii) any group of Affiliates of which Borrower is a part); provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing and (E) except as expressly permitted pursuant to the terms of this Agreement, Sole Member may not resign and no additional member shall be admitted to Borrower; and

has and will have an operating agreement which provides that, as long as any portion of the Debt remains outstanding, (A) Borrower shall be dissolved, and its affairs shall be wound up only upon the first to occur of the following: (x) the termination of the legal existence of the last remaining member of Borrower or the occurrence of any other event which terminates the continued membership of the last remaining member of Borrower in Borrower unless the business of Borrower is continued in a manner permitted by its operating agreement or the Delaware Limited Liability Company Act (the "*Delaware Act*") or (y) the entry of a decree of judicial dissolution under Section 18-802 of the Delaware Act; (B) upon the occurrence of any event that causes the last remaining member of Borrower to cease to be a member of Borrower or that causes Sole Member to cease to be a member of Borrower (other than (x) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents, or (y) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), to the fullest extent permitted by law, the personal representative of such member shall be authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in Borrower, agree in writing to continue the existence of Borrower and to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of such member in Borrower; (C) the bankruptcy of Sole Member or a Special Member shall not cause such member or Special Member, respectively, to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution; (D) in the event of dissolution of Borrower, Borrower shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of Borrower in an orderly manner), and the assets of Borrower shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Delaware Act; and (E) to the fullest extent permitted by law, each of Sole Member and the Special Members shall irrevocably waive any right or power that they might have to cause Borrower or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of Borrower, to compel any sale of all or any portion of the assets of Borrower pursuant to

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any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of Borrower.

(III) "**Cause**" shall mean, with respect to an Independent Director, (i) acts or omissions by such Independent Director that constitute willful disregard of, or gross negligence with respect to such Independent Director's duties, (ii) such Independent Director has engaged in or has been charged with or has been indicted or convicted for any crime or crimes of fraud or other acts constituting a crime under any law applicable to such Independent Director, (iii) such Independent Director has breached its fiduciary duties of loyalty and care as and to the extent of such duties in accordance with the terms of the Borrower's or the SPE Party's organizational documents, (iv) there is a material increase in the fees charged by such Independent Director or a material change to such Independent Director's terms of service, (v) such Independent Director is unable to perform his or her duties as Independent Director due to death, disability or incapacity, or (vi) such Person no longer meets the criteria provided in the definition of Independent Director.

(IV) "**Independent Director**" means a natural person selected by Borrower (a) with prior experience as an independent director, independent manager or independent member, (b) with at least three (3) years of employment experience, (c) who is provided by a Nationally Recognized Service Company (defined below), (d) who is duly appointed as an Independent Director and is not, will not be while serving as Independent Director (except pursuant to an express provision in Borrower's operating agreement providing for the appointment of such Independent Director to become a "special member" upon Sole Member ceasing to be a member of Borrower) and shall not have been at any time during the preceding five (5) years, any of the following:

- (i) *a stockholder, director (other than as an Independent Director), officer, employee, partner, attorney or counsel of Borrower, any Affiliate of Borrower or any direct or indirect parent of Borrower;*
- (ii) *a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower;*
- (iii) *a Person or other entity Controlling or under Common Control with any such stockholder, partner, customer, supplier or other Person; or*
- (iv) *a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person.*

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (i) by reason of being the Independent Director of a "special purpose entity" affiliated with Borrower shall be qualified to serve as an Independent Director of Borrower, provided that the fees that such individual earns from serving as Independent Director of affiliates of Borrower

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in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

A natural person who satisfies the foregoing definition other than clause (ii) shall not be disqualified from serving as an Independent Director of Borrower if such individual is an independent director or special manager provided by a Nationally Recognized Service Company that provides professional independent directors and special managers and also provides other corporate services in the ordinary course of its business.

(V) *"Nationally Recognized Service Company"* means any of CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company or such other nationally recognized company that provides independent director, independent manager or independent member services and that is reasonably satisfactory to Lender, in each case that is not an Affiliate of Borrower and that provides professional independent directors and other corporate services in the ordinary course of its business.

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EXHIBIT "B"

PARCEL 1:

Lots 16 through 30, inclusive, Block F, of CORAL SPRINGS UNIVERSITY DRIVE SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 60, at Page 42, of the Public Records of Broward County, Florida.

PARCEL 2:

Lots 31 through 38, inclusive, in Block A of CORAL SPRINGS UNIVERSITY DRIVE SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 60, at Page 42, of the Public Records of Broward County, Florida.

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