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VIEWRAY INCORPORATED

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**ARTICLES OF AMENDMENT TO
ARTICLES OF INCORPORATION
OF
VIEWRAY INCORPORATED**

**DETERMINING AND DESIGNATING THE PREFERENCES,
LIMITATIONS AND RELATIVE RIGHTS OF
SERIES A CONVERTIBLE PREFERRED STOCK**

**Pursuant to Sections 607.0601 and .0602
of the
Florida Business Corporation Act**

Viewray Incorporated, a Florida corporation maintaining its principal business offices at 101 S.E. 2nd Place, Suite 201-D, Gainesville, Florida 32601 (the "Corporation"), hereby certifies that pursuant to authority conferred upon the Board of Directors by the Articles of Incorporation of the Corporation, and pursuant to the provisions of Sections 607.0601, .0602 and .0821, Florida Statutes, the Board of Directors, by unanimous written action, taken on June 28, 2005, has adopted a resolution approving and providing for the designation and issuance of a series of its 10,000,000 shares of authorized preferred stock, no par value, the content of which resolution is hereafter set forth in its entirety:

RESOLVED, that pursuant to the authority expressly granted and vested in the Board of Directors of this Corporation in accordance with the provisions of its Articles of Incorporation, a series of the Corporation's authorized class of preferred stock, no par value, is hereby established as "Series A Convertible Preferred Stock, No Par Value," hereinafter referred to as the "Series A Preferred Stock", which series shall consist of 266,500 shares. The Series A Preferred Stock shall have a stated value of \$7.60 per share (the "Stated Value"), as the same may be equitably adjusted whenever there shall occur a stock dividend, stock split, combination, reclassification or other similar event affecting the Series A Preferred Stock. The preferences and relative, participating, optional or other special rights of, and the qualifications, limitations and restrictions imposed on the Series A Preferred Stock shall be as follows:

1. Ranking.

As provided for herein, the Series A Preferred Stock shall rank senior to the common stock of the Corporation (the "Common Stock") as to liquidation, dissolution or winding up (collectively, the "Liquidation Preferences").

2. Dividends.

The holders of shares of the Series A Preferred Stock shall be entitled to share ratably with the Common Stock in all ordinary dividends and other distributions (i.e., not in connection

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with the liquidation, dissolution or winding up of the Corporation), when and as declared by the Board of Directors out of the funds of the Corporation legally available therefore.

3. Voting Rights.

Each issued and outstanding share of Series A Preferred Stock shall entitle the registered holder thereof to fully participate in all shareholders meetings and to cast one vote on each matter with respect to which shareholders have a right to vote.

4. Priority in the Event of Liquidation, Dissolution or Winding Up.

In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or otherwise, after payment or provision for payment of the debts and other liabilities of the Corporation and before any distribution shall be made to the holders of any class of the Common Stock of the Corporation, each holder of Series A Preferred Stock shall be entitled to receive, out of the net assets of the Corporation, the sum of \$7.60 in cash for each share of Series A Preferred Stock so held plus an amount equal to all dividends accrued and unpaid on each such share up to the date fixed for distribution. After payment shall have been made in full to the holders of Series A Preferred Stock, or funds necessary for such payment shall have been set aside in trust for the exclusive benefit of such holders, the holders of the Series A Preferred Stock shall be entitled to no further participation in any distribution of the assets of the Corporation. For purposes of this Section, (i) any acquisition of the Corporation by means of merger or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary in which the holders of the Corporation's outstanding securities immediately before such acquisition do not immediately after such acquisition retain securities representing a majority of the voting power of the surviving entity of such acquisition shall not be treated as a liquidation, dissolution or winding up of the Corporation; and (ii) a sale, transfer or conveyance of all or substantially all of the assets of the Corporation in exchange for all cash consideration shall be treated as a liquidation, dissolution or winding up of the Corporation.

5. Conversion of Preferred Stock into Common Stock.

(a) **Right to Convert.** Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance by the Corporation thereof (the "Effective Date"), at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value by the Series A Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series A Preferred Stock (the "Series A Conversion Price" or "Conversion Price") shall initially be \$7.60 per share of Common Stock. Such initial Series A Conversion Price shall be adjusted as hereinafter provided.

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(b) **Automatic Conversion.** Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Series A Conversion Price, upon the date of closing of: (i) the sale of shares of the Corporation's securities through an initial underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), through lead underwriters of national standing, other than a registration relating solely to a transaction under Rule 145 of such Act (or any successor thereto) or to an employee benefit plan of the Corporation (the "IPO"); or (ii) any acquisition of the Corporation by means of merger or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary in which the holders of the Corporation's outstanding securities immediately before such acquisition do not immediately after such acquisition retain securities representing a majority of the voting power of the surviving entity of such acquisition.

(c) **Mechanics of Conversion.** Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) **Adjustments to Series A Conversion Price for Certain Diluting Issues.**

(i) **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.** In the event this Corporation, at any time after the date on which a share of Series A Preferred Stock was issued (the "Original Issue Date") but prior to the Corporation's IPO, shall issue shares of its Common Stock (or options to acquire shares of Common Stock or securities convertible into shares of Common Stock): (1) such that the then number of issued and outstanding shares of Common Stock on a fully diluted basis exceeds 1,308,767 shares, (2) at a price which is below the Series A Conversion Price, and (3) the number of shares issued or issuable exceeds 1% of the Corporation's issued and outstanding Common Stock on a fully diluted basis, then and in such event, the Conversion Price for such Series A Preferred Stock shall be reduced, concurrently with such issue, to the price (calculated to the nearest cent) derived from the following formula: the number of shares of Common Stock outstanding, on a fully diluted basis, multiplied by the Series A Conversion Price in effect immediately prior to new issue; plus the amount of the new investment (number of new shares times the new per

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share price); divided by the total number of shares of Common Stock, on a fully diluted basis, outstanding after the new investment. In other words: $CP2 = \frac{(CP1 \times A) + B}{A + C}$, where:

- CP2 = New Series A Conversion Price
- CP1 = Series A Conversion Price in effect immediately prior to new issue
- A = Number of shares of Common Stock deemed to be outstanding immediately prior to new issue on a fully diluted basis
- B = Aggregate consideration received by the Corporation with respect to the new issue (number of new shares times the new per share price)
- C = Number of shares of Common Stock issued in the subject transaction (or options to acquire shares of Common Stock or securities convertible into shares of Common Stock)

(ii) **Determination of Consideration.** For purposes of this Section 5(d), the consideration received by the Corporation for the issue of any additional securities shall be computed as follows:

(1) **Cash and Property.** Such consideration shall:

- a. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends; and
- b. insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors.

(2) **Options and Convertible Securities.** The consideration per share to be received by the Corporation, relating to options and convertible securities shall be determined by dividing:

- a. the total amount, if any, received or receivable by the Corporation as consideration for the issue of such options or convertible securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such options or the conversion or exchange of such convertible securities, or in the case of options for convertible securities, the exercise of such options for convertible securities by
- b. the maximum number of shares (as set forth in the instruments relating thereto, without regard to any provision contained therein

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designed to protect against the dilution) issuable upon the exercise of such options or conversion or exchange of such convertible securities.

(c) **Adjustments to Conversion Price for Combinations or Subdivisions of Common Stock.** In the event that this Corporation at any time or from time to time after the Original Issue Date shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for the Series A Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate.

(f) **Adjustments for Reclassification and Reorganization.** If the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 5(c) above), the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock immediately before that change.

(g) **No Impairment.** The Corporation will not, by amendment of its Articles of Incorporation or through reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

(h) **Certificates as to Adjustments.** Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustments and readjustments, (B) the Conversion Price for the Series A Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other

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property which at the time would be received upon the conversion of the Series A Preferred Stock.

(i) **Notices of Record Date.** In the event that the Corporation shall propose at any time: (A) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (B) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (C) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (D) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Series A Preferred Stock:

(1) at least (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (C) and (D) above; and

(2) in the case of the matters referred to in (C) and (D) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(j) **Issue Taxes.** The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(k) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Corporation's Articles of Incorporation.

(l) **Fractional Shares.** No fractional share shall be issued upon the conversion of any share or shares of Series A Preferred Stock. All shares of Common Stock (including

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fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

6. Pre-emptive Rights.

Except for up to 1,308,767 shares of Common Stock and up to 266,500 shares of Series A Preferred Stock, the Corporation shall not issue any additional shares of its equity capital without first: (a) receiving the written consent of each holder of Series A Preferred Stock to do so; or (b) having made the offer set forth below to each holder of Series A Preferred Stock, which offer shall not have been accepted. Any offer referred to herein shall be furnished by the Corporation in writing, to each holder of Series A Preferred Stock, which writing shall contain the offer to sell, as well as the price at which such shares are being offered for sale. The amount of shares offered to each holder of Series A Preferred Stock will be proportionate to such holder of Series A Preferred Stock's percentage ownership interest in the Corporation prior to the offering being made by the Corporation.

Within 15 days after any such offer has been furnished, each holder of Series A Preferred Stock may accept the offer by giving notice to the Corporation. The responding notice must indicate the number of shares to be purchased, up to the full amount offered to the holder of Series A Preferred Stock, and shall be accompanied by funds equal to the purchase price for such shares. Upon receipt of the purchase price, the Corporation shall deliver to each purchaser a certificate representing the shares, in negotiable form, with all required documentary stamps attached.

If the Corporation's written offer to sell is not accepted by one or more holders of Series A Preferred Stock, the Corporation may sell to third parties (including other shareholders) the amount of shares not purchased pursuant to the offer. Any such sale must at a price equal to or more favorable to the Corporation than the price and terms stated in the offer to the holder of Series A Preferred Stock.

7. Right of Co-Sale.

In the event any shareholder or group of shareholders holding more than 50% of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Voting Securities") (a "Majority Selling Shareholder") desire to sell more than 50% of the then issued and outstanding Voting Securities of the Corporation, each holder of Series A Preferred Stock other than a Majority Selling Shareholder (each a "Co-Seller") shall have the right to sell to the third party, as a condition to such sale by such Majority Selling Shareholder, up to that number of shares of Series A Preferred Stock, on

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an as converted basis into shares of Common Stock (hereinafter, "on an as converted basis"), held by such Co-Seller bearing the same ratio as the total shares of capital stock to be sold by the Majority Selling Shareholder on an as converted basis bear to the total shares of capital stock owned by all shareholders of the Corporation on an as converted basis. The number of shares of capital stock on an as converted basis to be sold to the third party by the Majority Selling Shareholder shall be reduced by the number of shares of Series A Preferred Stock on an as converted basis to be sold by Co-Sellers that have exercised their right of co-sale. The Majority Selling Shareholder shall deliver to each Co-Seller written notice (the "Co-Sale Notice") of any sale to be made pursuant hereto, which notice shall set forth the price per share on an as converted basis to be paid by the third party and the other terms and conditions, if any, of such transaction, which shall be the same price and the same terms and conditions provided to the Majority Selling Shareholder. A Co-Seller shall provide written notice to the Majority Selling Shareholder of the Co-Seller's intent to exercise his rights of co-sale within 60 days of having received the Co-Sale Notice.

In connection with the co-sale, each Co-Seller shall enter into a stock purchase agreement substantially similar to the stock purchase agreement entered into by the Majority Selling Shareholder and make representations and warranties relating to such Co-Seller's ownership and authority to transfer his shares of Series A Preferred Stock on an as converted basis, the absence of any liens or encumbrances on such shares of Series A Preferred Stock on an as converted basis and the compliance of such transfer with federal and state securities law and all other applicable laws and regulations. No Co-Seller shall be required to make any representations or warranties concerning any other shareholder or such other shareholders' ownership of shares of the Corporation's capital stock, nor shall any Co-Seller be obligated in connection with such sale to agree to indemnify or hold harmless any person for any liability for misrepresentation, breach of warranty or indemnity made by the Corporation or the Majority Selling Shareholder. In no event shall any Co-Seller have any liability in excess of the net proceeds received by such Co-Seller in connection with such sale.

8. Drag-Along Right.

In the event any Majority Selling Shareholder desires to sell more than 50% of the then issued and outstanding shares of Voting Securities of the Corporation, each holder of shares of Series A Preferred Stock other than a Majority Selling Shareholder (each, a "Drag Along Seller") will be required to sell to such third party (a "Drag Along Sale") all of such Drag Along Shareholder's shares of Series A Preferred Stock on an as converted basis at the same price and upon the same terms and conditions provided to the Majority Selling Shareholder, assuming all shares of the capital stock of the Company being sold by the Majority Selling Shareholder are being sold on an as converted basis.

The Majority Selling Shareholder shall deliver to each Drag Along Seller written notice (the "Drag Along Notice") of any sale to be made pursuant hereto, which notice shall set forth the price per share on an as converted basis to be paid by the third party and the other terms and conditions, if any, of such transaction. Pending consummation of the Drag Along Sale, the

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Majority Selling Shareholder shall promptly notify each Drag Along Seller of any changes in the proposed timing for the Drag Along Sale and any other material developments in connection therewith.

In connection with a Drag Along Sale, each Drag Along Seller shall enter into a stock purchase agreement substantially similar to the stock purchase agreement entered into by the Majority Selling Shareholder and make representations and warranties relating to such Drag Along Seller's ownership and authority to transfer his shares of Series A Preferred Stock on an as converted basis, the absence of any liens or encumbrances on such shares of Series A Preferred Stock on an as converted basis and the compliance of such transfer with federal and state securities law and all other applicable laws and regulations. No Drag Along Seller shall be required to make any representations or warranties concerning any other shareholder or such other shareholders' ownership of shares of the capital stock of the Corporation, nor shall any Drag Along Seller be obligated in connection with such sale to agree to indemnify or hold harmless any person for any liability for misrepresentation, breach of warranty or indemnity made by the Corporation or the Majority Selling Shareholder. In no event shall any Drag Along Seller have any liability in excess of the net proceeds received by such Drag Along Seller in connection with such sale.

9. Limitations on Corporation; Shareholder Consent.

So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote or the written consent as provided by law, of 80% of the holders of the outstanding shares of the Series of Preferred Stock, voting as a class, change the preferences, rights or limitations with respect to such Series in any material respect prejudicial to the holders thereof, or increase the authorized number of shares of such Series, but nothing herein contained shall require such a class vote or consent (a) in connection with any increase in the total number of authorized shares of Common Stock, or (b) in connection with the authorization, designation, increase or issuance of any class or series of stock holding a ranking subordinate to the Series A Preferred Stock. Further, the provisions of this Section shall not in any way limit the right and power of the Corporation to issue any bonds, notes, mortgages, debentures and other obligations, and to incur indebtedness to banks and to other lenders.

10. Notices.

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered properly given or made if hand delivered, mailed from within the United States by certified or registered mail, or sent by overnight delivery service, if to the Corporation at its address indicated in its Annual Report as most recently filed with the Florida Department of State, and if to a holder of Series A Preferred Stock at the address set forth in the shareholder records as maintained by the Corporation, or to such other address as any such shareholder may have designated by like notice forwarded to the Corporation. All notices, except notices of change of address, shall be deemed given when mailed or hand delivered and notices of change of address shall be deemed given when received.

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The foregoing amendment to the Corporation's Articles of Incorporation was duly adopted by written consent of the holders of all of the shares of the Corporation's issued and outstanding common stock, in accordance with the provisions of Section 607.0704, Florida Statutes, and by operation of subsection (5) thereof, and not in contravention of the requirements of Sections 607.1003 or 607.1006, Florida Statutes, the initial such consent being dated and received by the Corporation as of June 28, 2005, and the consent providing the required majority in interest authorization for the proposed action being dated and received as of June 28, 2005, without any such consents being revoked within the intervening period.

In witness whereof, the undersigned has executed these Articles of Amendment effective as of June 28, 2005.

VIEWRAY INCORPORATED

By: /s/ Russell S. Donda
Russell S. Donda, President

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