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BASIC AMENDMENT

DIALTONE, INC.

Certificate of Status	0
Certified Copy	1
Page Count	31
Estimated Charge	\$43.75

FILED
00 DEC -5 PM 4:38
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Amendment
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(31)

SECOND ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION OF DIALTONE, INC.

The undersigned, acting in his capacity as a Director and President of DIALTONE, INC. (the "Corporation"), a Florida corporation, on behalf of the Corporation, has executed these Second Articles of Amendment to the Articles of Incorporation, as adopted by the unanimous vote of the Board of Directors of the Corporation on the 4 day of December, 2000, and the unanimous vote of the shareholders of the Corporation on the 4 day of December, 2000.

These Second Articles of Amendment authorize a new series of Preferred Stock, amend the rights and preferences of the Series A Preferred Stock of the Corporation and establish the rights and preferences of the Series B Preferred Stock of the Corporation.

ARTICLE I - NAME

The name of this Corporation is DIALTONE, INC.

ARTICLE II - AMENDMENT

Article V of the Articles of Incorporation is amended in its entirety to read as follows:

ARTICLE V - CAPITAL STOCK

5.1 Common Stock. The aggregate number of shares of common stock which the corporation shall have authority to issue is 3,000,000, with par value of \$0.005 per share.

5.2 Preferred Stock. The aggregate number of shares of Preferred Stock which the corporation shall have authority to issue is 239, with a par value of \$1.00 per share, upon such terms and conditions, including dividend preferences and conversion privileges as set forth herein. Two hundred (200) shares of authorized shares of Preferred Stock are hereby designated "Series A Convertible Preferred Stock" and thirty-nine (39) shares of the authorized shares of Preferred Stock shall be designated "Series B Convertible Preferred Stock", each with the rights, preferences, privileges and restrictions as set forth in the succeeding provisions of this Article V.

Series A Convertible Preferred Stock and Series B Convertible Preferred Stock

The Series A Convertible Preferred Stock and the Series B Convertible Preferred Stock shall have the following powers, preferences and rights, and qualifications, limitations and restrictions:

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Section 1. Dividends.

(a) **General Obligation.** When, as, and if declared by the Corporation's Board of Directors, and to the extent permitted under the Florida Business Corporation Act, the Corporation shall pay dividends (on a non-cumulative basis) in cash to the holders of the Series A Convertible Preferred Stock (the "Series A Preferred") and Series B Convertible Preferred Stock (the "Series B Preferred"), on a pro rata basis, prior and in preference to the holders of all other classes of stock of the Corporation, as provided in this Section 1. The date on which the Corporation initially issues any share of Series A Preferred shall be deemed to be its "date of issuance," regardless of the number of times transfer of such share of Series A Preferred is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such share of Series A Preferred and the date on which the Corporation initially issues any share of Series B Preferred shall be deemed to be its "date of issuance," regardless of the number of times transfer of such share of Series B Preferred is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such share of Series B Preferred. No dividends shall be paid on any share of Series A Preferred Stock, Series B Preferred Stock or Common Stock unless at the same time an equivalent dividend is paid on each outstanding share of Series A Preferred and Series B Preferred.

(b) **Common Stock Dividends.** In addition to any amounts payable to the holders of the Series A Preferred and Series B Preferred under this Section 1, if the Corporation declares or pays a dividend upon Common Stock (a "Common Stock Dividend"), then the Corporation shall pay to the holders of the Series A Preferred and Series B Preferred at the time of payment thereof Common Stock Dividends which would have been paid on the shares of Series A or Series B Conversion Stock, as applicable, had such Series A Preferred and Series B Preferred been converted immediately prior to the date on which a record is taken for such Common Stock Dividend, or, if no record is taken, the date as of which the record holders of Common Stock entitled to such dividends are to be determined.

(c) **Distribution of Partial Dividend Payments.** Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series A Preferred and/or the Series B Preferred, such payment shall be distributed pro rata among the holders thereof, on a pro rata basis, based upon the number of shares of Series A Preferred or Series B Preferred held by each such holder.

Section 2. Liquidation.

(a) Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), each holder of shares of Series A Preferred and Series B Preferred shall be entitled to be paid, on a pro-rata basis, before any distribution or payment is made upon any Junior Securities, an amount in cash equal to the aggregate

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Liquidation Value of all shares of Series A Preferred and Series B Preferred held by such holder (plus all accrued and unpaid dividends thereon), plus such amount set forth in Section 2(b) hereof. If upon any such liquidation, dissolution or winding up of the Corporation the Corporation's assets to be distributed among the holders of shares of Series A Preferred and Series B Preferred are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid under this Section 2, then the entire assets available to be distributed to the Corporation's stockholders shall be distributed on a pro rata among such holders of Series A Preferred and Series B Preferred based upon the aggregate Liquidation Value (plus all accrued and unpaid dividends) of the Series A Preferred and Series B Preferred held by each such holder. Prior to the liquidation, dissolution or winding up of the Corporation, the Corporation shall pay all accrued and unpaid dividends with respect to the Series A Preferred and Series B Preferred, but only to the extent funds of the Corporation are legally available for the payment of dividends. Not less than sixty (60) days prior to the payment date stated therein, the Corporation shall mail written notice of any such liquidation, dissolution or winding up to each record holder of the Series A Preferred and Series B Preferred, setting forth in reasonable detail the amount of proceeds to be paid with respect to each share of Series A Preferred and Series B Preferred and each share of Common Stock in connection with such liquidation, dissolution or winding up.

(b) In addition to and after payment in full of all other amounts payable to the holders of the Series A Preferred and Series B Preferred under Section 2(a), upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), the holders of the Series A Preferred and Series B Preferred shall be entitled to participate, on an as if converted to Common Stock basis, with the holders of Common Stock as a single class in the distribution of assets of the Corporation with respect to Common Stock.

(c) Whenever the distribution provided for in this Section 2 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the board of directors of the Corporation (the "Board of Directors"). Whenever the distribution provided for in this Section 2 shall be payable in securities, such securities shall be valued as follows:

(i) If traded on a securities exchange or the Nasdaq National Market System, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period ending three (3) days prior to the closing;

(ii) If actively traded over the counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the closing; and

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(iii) If there is no active public market, the value shall be the fair market value thereof, as determined in accordance with the definition of Market Price herein.

(d) For the purposes of this Section 2, a "liquidation, dissolution or winding up" of the Corporation shall include a Fundamental Change and a Change in Ownership, as such terms are defined in Section 4 hereof.

Section 3. Priority of Series A Preferred and Series B Preferred on Dividends and Redemptions.

So long as any shares of the Series A Preferred or Series B Preferred remain outstanding, without the prior written consent of the holders of a majority of the outstanding shares of Series A Preferred and the holders of a majority of the outstanding shares of Series B Preferred, the Corporation shall not, nor shall it permit any Subsidiary to, redeem, purchase or otherwise acquire directly or indirectly any Junior Securities, nor shall the Corporation directly or indirectly pay or declare any dividend or make any distribution upon any Junior Securities.

Section 4. Redemptions.

(a) **Redemption Payments.** For each share of Series A Preferred and Series B Preferred which is to be redeemed hereunder, the Corporation shall be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such share of Series A Preferred or Series B Preferred, as applicable) an amount in cash equal to the values per share described hereinbelow in this Section 4 (the "Redemption Value") for each such share of Series A Preferred (plus all accrued and unpaid dividends thereon) and Series B Preferred (plus all accrued and unpaid dividends thereon). If the funds of the Corporation legally available for redemption of shares of Series A Preferred and Series B Preferred on any Redemption Date are insufficient to redeem the total number of shares of Series A Preferred and Series B Preferred to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of shares of Series A Preferred and Series B Preferred pro rata among the holders of the shares of Series A Preferred and Series B Preferred to be redeemed based upon the Redemption Value of such shares of Series A Preferred or Series B Preferred, as applicable, held by each such holder (plus all accrued and unpaid dividends thereon). At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred and Series B Preferred, such funds shall immediately be used to redeem the balance of the shares of Series A Preferred and Series B Preferred which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed. Prior to any redemption of any shares of Series A Preferred and Series B Preferred, other than pursuant to Section 4(g), the Corporation shall pay all accrued and unpaid dividends with respect to the shares of Series A

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Preferred and Series B Preferred which are to be redeemed, but only to the extent of funds of the Corporation legally available for the payment of dividends.

(b) Determination of the Number of Each Holder's Shares of Series A Preferred and Series B Preferred to be Redeemed. Except as otherwise provided herein, the number of shares of Series A Preferred to be redeemed from each holder thereof in redemptions hereunder shall be the number of shares of Series A Preferred determined by multiplying the total number of shares of Series A Preferred to be redeemed times a fraction, the numerator of which shall be the total number of shares of Series A Preferred then held by such holder and the denominator of which shall be the total number of shares of Series A Preferred then outstanding. Except as otherwise provided herein, the number of shares of Series B Preferred to be redeemed from each holder thereof in redemptions hereunder shall be the number of shares of Series B Preferred determined by multiplying the total number of shares of Series B Preferred to be redeemed times a fraction, the numerator of which shall be the total number of shares of Series B Preferred then held by such holder and the denominator of which shall be the total number of shares of Series B Preferred then outstanding.

(c) Dividends After Redemption Date. No share of Series A Preferred or Series B Preferred shall be entitled to any dividends accruing after the date on which the Redemption Value of such share of Series A Preferred or Series B Preferred (plus all accrued and unpaid dividends thereon) is paid to the holder of such share of Series A Preferred or Series B Preferred. On such date, all rights of the holder of such share of Series A Preferred or Series B Preferred shall cease, and such share of Series A Preferred or Series B Preferred shall no longer be deemed to be issued and outstanding.

(d) Redeemed or Otherwise Acquired Shares of Series A Preferred and Series B Preferred. Any shares of Series A Preferred or Series B Preferred which are redeemed or otherwise acquired by the Corporation shall be canceled and shall not be reissued, sold or transferred.

(e) Payment of Accrued Dividends. The Corporation may not redeem any shares of Series A Preferred or Series B Preferred, unless all dividends accrued on the outstanding Series A Preferred and Series B Preferred through the date of such redemption, if any, have been declared and paid in full; *provided, however*, if the Corporation redeems any shares of Series A Preferred or Series B Preferred pursuant to Section 4(g), no accrued dividends shall be declared or paid upon such redemption.

(f) Special Redemptions.

(i) If a Change in Ownership (as defined below) has occurred or the Corporation obtains knowledge that a Change in Ownership is proposed to occur, the Corporation shall give prompt written notice of such Change in Ownership describing in reasonable detail the material terms and date of consummation thereof to each holder of Series A Preferred and Series B Preferred, but in any event such notice shall not be

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given later than thirty (30) days prior to the occurrence of such Change in Ownership, and the Corporation shall give each holder of Series A Preferred and Series B Preferred prompt written notice of any material change in the terms or timing of such transaction. The holder or holders of a majority of Series A Preferred then outstanding may require the Corporation to redeem all or any portion of the Series A Preferred owned by such holder or holders and the holder or holders of a majority of Series B Preferred then outstanding may require the Corporation to redeem all or any portion of the Series B Preferred owned by such holder or holders, in each case by giving written notice to the Corporation of such election prior to the later of: (a) twenty-one (21) days after receipt of the Corporation's notice; or (b) five (5) days prior to the consummation of the Change in Ownership (the "Expiration Date"). The per share cash redemption price to be paid by the Corporation shall be the Market Price. The Corporation shall give prompt written notice of any such election to all other holders of the Series A Preferred and Series B Preferred within five (5) days after the receipt thereof, and each such holder shall have until the later of: (a) the Expiration Date; or (b) ten (10) days after receipt of such second notice to request redemption hereunder (by giving written notice to the Corporation) of all or any portion of the Series A Preferred or Series B Preferred owned by such holder.

Upon receipt of such election(s), the Corporation shall be obligated to redeem the aggregate number of shares of Series A Preferred and Series B Preferred specified therein on the later of: (a) the occurrence of the Change in Ownership; or (b) five (5) days after the Corporation's receipt of such election(s). If any proposed Change in Ownership does not occur, all requests for redemption in connection therewith shall be automatically rescinded, or if there has been a material change in the terms or the timing of the transaction, any holder of the Series A Preferred and any holder of the Series B Preferred may rescind such holder's request for redemption by giving written notice of such rescission to the Corporation.

The term "Change in Ownership" means any sale, transfer or issuance or series of sales, transfers and/or issuances of shares of the Corporation's capital stock by the Corporation or any holders thereof, via a merger, consolidation, reorganization or otherwise, which results in any Person or group of Persons (as the term "group" is used under the Securities Exchange Act of 1934), other than the holders of Common Stock as of the date of the Purchase Agreement, owning capital stock of the Corporation possessing the voting power (under ordinary circumstances) to elect a majority of the Board of Directors.

(ii) If a Fundamental Change (as defined below) is proposed to occur, the Corporation shall give written notice of such Fundamental Change describing in reasonable detail the material terms and date of consummation thereof to each holder of the Series A Preferred and each holder of the Series B Preferred not more than forty-five (45) days nor less than twenty (20) days prior to the consummation of such Fundamental Change, and the Corporation shall give each holder of the Series A Preferred and each holder of the Series B Preferred prompt written notice of any material change in the terms or timing of such transaction. The holder or holders of a majority of

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the Series A Preferred then outstanding and the holder or holders of a majority of the Series B Preferred then outstanding may require the Corporation to redeem all or any portion of the Series A Preferred and the Series B Preferred owned by such holder or holders by giving written notice to the Corporation of such election prior to the later of: (a) ten (10) days prior to the consummation of the Fundamental Change; or (b) ten (10) days after receipt of notice from the Corporation. The per share cash redemption price to be paid by the Corporation shall be the Market Price. The Corporation shall give prompt written notice of such election to all other holders of the Series A Preferred and Series B Preferred (but in any event within five (5) days prior to the consummation of the Fundamental Change), and each such holder shall have until two (2) business days after the receipt of such notice to request redemption (by written notice given to the Corporation) of all or any portion of the Series A Preferred and Series B Preferred owned by such holder.

Upon receipt of such election(s), the Corporation shall be obligated to redeem the aggregate number of shares of Series A Preferred and Series B Preferred specified therein upon the consummation of such Fundamental Change. If any proposed Fundamental Change does not occur, all requests for redemption in connection therewith shall be automatically rescinded, or if there has been a material change in the terms or the timing of the transaction, any holder of the Series A Preferred or Series B Preferred may rescind such holder's request for redemption by delivering written notice thereof to the Corporation prior to the consummation of the transaction.

The term "Fundamental Change" means: (a) any sale or transfer of all or substantially all of the assets of the Corporation and its Subsidiaries on a consolidated basis (measured either by book value in accordance with generally accepted accounting principles consistently applied or by fair market value determined in the reasonable good faith judgment of the Board of Directors) in any transaction or series of transactions (other than sales in the ordinary course of business); and (b) any merger or consolidation to which the Corporation is a party, except for a merger in which the Corporation is the surviving corporation, the terms of the Series A Preferred and Series B Preferred are not changed and the Series A Preferred and Series B Preferred is not exchanged for cash, securities or other property, and after giving effect to such merger, the holders of the Corporation's outstanding capital stock possessing a majority of the voting power (under ordinary circumstances) to elect a majority of the Board of Directors immediately prior to the merger shall continue to own the Corporation's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the Board of Directors.

(g) Redemptions upon Request. After the earlier of: (i) July 5, 2005, (ii) an Event of Noncompliance (as defined in Section 9 hereof), the holders of a majority of the outstanding shares of Series A Preferred or a majority of the outstanding shares of Series B Preferred may request redemption of all of their shares of the Series A Preferred or Series B Preferred, as applicable, by delivering written notice of such request to the Corporation. Within five (5) days after receipt of such request, the Corporation shall

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give written notice of such request to all other holders of the Series A Preferred and Series B Preferred, and such other holders may request redemption of their shares of the Series A Preferred or Series B Preferred, as applicable, by delivering written notice to the Corporation within ten (10) days after receipt of the Corporation's notice. The Corporation shall be required to redeem all shares of Series A Preferred and Series B Preferred with respect to which such redemption requests have been made at a price per share equal to the Liquidation Value thereof within twenty (20) days after receipt of the initial redemption request, except as otherwise provided in Section 9 hereof. Notwithstanding the foregoing, the redemption right set forth in this Section 4(g) shall terminate upon a Qualified Public Offering.

(h) Election of Redemption Rights. In the event that circumstances exist such that a holder of Series A Preferred or Series B Preferred could avail itself of either Section 4(f), Section 4(g), or Section 9, such holder may elect under which section it chooses to cause redemption and have determined whether to receive Market Price per share or Liquidation Value per share. In the event that circumstances exist such that any holder of Series A Preferred or Series B Preferred is entitled to and elects not to redeem under Section 4(f), such holder shall instead have the right to elect to receive the amounts to which it is entitled under Section 2 upon completion of the Change in Ownership or Fundamental Change, as applicable.

Section 5. Voting Rights.

(a) Election of Directors, and Board Observer Rights. In the election of directors of the Corporation, the holders of the Series A Preferred, voting separately as a single class to the exclusion of all other classes of the Corporation's capital stock and with each share of the Series A Preferred entitled to one vote, shall be entitled to elect one (1) director to serve on the Board of Directors until his successor is duly elected by the holders of the Series A Preferred or he is removed from office by the holders of the Series A Preferred. If the holders of the Series A Preferred for any reason fail to elect anyone to fill any such directorship, such position shall remain vacant until such time as the holders of the Series A Preferred elect a director to fill such position and shall not be filled by resolution or vote of the Board of Directors or the Corporation's other stockholders. In order to protect the representation on the Board of Directors granted to the holders of the Series A Preferred, any change of the number of directors constituting the Board of Directors to below three (3) or to greater than five (5) members, shall require, in addition to any other voting requirement set forth in the Articles of Incorporation or Bylaws of the Corporation, the vote of a majority of the Series A Preferred issued and outstanding, voting separately as a single class to the exclusion of all other classes of the Corporation's capital stock and with each share of the Series A Preferred entitled to one vote. The holders of a majority of outstanding shares of Series B Preferred shall be entitled to have a representative as an observer at all meetings of the Board of Directors as set forth in the Series B Purchase Agreement.

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(b) Matters Having an Adverse Affect on Series A Preferred or Series B Preferred. Neither the Corporation nor its Subsidiaries shall take any of the following actions without first obtaining the written approval of (a) the holders of a majority of the Series A Preferred then outstanding, voting separately as a single class to the exclusion of all other classes of the Corporation's capital stock and with each share of the Series A Preferred entitled to one vote; and (b) the holders of a majority of the Series B Preferred then outstanding, voting separately as a single class to the exclusion of all other classes of the Corporation's capital stock and with each share of the Series B Preferred entitled to one vote:

(i) all matters which adversely affect the Series A Preferred or Series B Preferred and the holders thereof;

(ii) any matter which directly or indirectly authorizes or approves the declaration, or payment of any dividend or the making of any distribution upon any equity securities of the Corporation, other than payments of dividends on, or redemption payments in respect of, the Series A Preferred or the Series B Preferred Stock pursuant to these Articles of Incorporation;

(iii) except as otherwise permitted by the Purchase Agreement, the Series B Purchase Agreement, or these Articles of Incorporation, the direct or indirect redemption, purchase or acquisition of any of its equity securities (including without limitation warrants, options, and other rights to acquire equity securities);

(iv) except as expressly contemplated by the Purchase Agreement and the Series B Purchase Agreement, the authorization, issuance, sale or entry into any agreement providing for the issuance (contingent or otherwise) or, permitting any of the Corporation's subsidiaries to authorize, issue, sell or enter into any agreement providing for the issuance (contingent or otherwise) of any equity securities or debt securities with equity features or securities exercisable or convertible into equity securities or debt securities with equity features which have powers, designations, preferences of right on parity with or superior to those of the Series A Preferred or the Series B Preferred;

(v) any merger or consolidation with any Person (other than a wholly-owned Subsidiary;

(vi) the sale, lease or other disposition of, more than ten percent (10%) of the consolidated assets of the Corporation and its Subsidiaries (computed on the basis of book value, determined in accordance with generally accepted accounting principles consistently applied, or fair market value, determined by the Board of Directors in its reasonable good judgment) in any transaction or series of related transactions (other than sales of inventory in the ordinary course of business);

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(vii) the liquidation, dissolution of the Corporation or any Subsidiary or the effectuation of any recapitalization or reorganization, of the Corporation or any Subsidiary, in any form of a transaction (including, without limitation, any reorganization into partnership form);

(viii) the making of any loans or advances to, guarantees for the benefit of, or Investments (as defined in the Purchase Agreement and the Series B Purchase Agreement) in, any Person other than a wholly-owned Subsidiary, except for: (a) reasonable advances to employees in the ordinary course of business and not to exceed \$10,000 in the aggregate; and (b) investments having a date of maturity no greater than one year from the date the Corporation makes such Investment in (1) obligations of the United States government or any agency thereof or obligations guaranteed by the United States government, (2) certificates of deposit of commercial banks having combined capital and surplus of at least \$50,000,000 or (3) commercial paper with a rating of at least "prime-one" by Moody's Investors Service, Inc.;

(ix) except as expressly contemplated by the Purchase Agreement and the Series B Purchase Agreement, or these Articles of Incorporation, make any amendment to the Corporation's Articles of Incorporation or Bylaws, including, without limitation, any amendment increasing or decreasing the authorized number of shares of Series A Preferred, Series B Preferred or Common Stock; and

(x) Any action that causes the Corporation to shift its emphasis towards engaging in any business other than the business engaged in by the Corporation at the time the first shares of Series B Preferred are issued by the Corporation.

Provided that, notwithstanding the foregoing provisions of Section 5(b), the holders of Series A Preferred shall not have the right to vote on or with respect to: (i) a loan from a commercial bank, (ii) the issuance of Common Stock pursuant to a Qualified Public Offering, (iii) a stock split, (iv) the issuance of securities upon exercise or conversion of the Corporation's options, warrants, other convertible securities outstanding as of the date of the first issuance of Series A Preferred, or the issuance of the Series B Preferred Stock, or (v) the grant of additional options or warrants or the issuance of additional securities under any Board of Directors approved stock option or restricted stock plan in each case for the benefit of the Corporation's employees, directors or consultants, to the extent that such grants or issuances amount in the aggregate for all such grants and issuances to less than 57 shares of Common Stock (subject to adjustment for stock splits, reorganizations, stock dividends, and the like).

Provided further that, notwithstanding the foregoing provisions of Section 5(b), the holders of Series B Preferred shall not have the right to vote on or with respect to: (i) a loan from a commercial bank, (ii) the issuance of Common Stock pursuant to a Qualified

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Public Offering, (iii) a stock split, (iv) the issuance of securities upon exercise or conversion of the Corporation's options, warrants, other convertible securities outstanding as of the date of the first issuance of shares of Series B Preferred, or (v) the grant of additional options or warrants or the issuance of additional securities under any Board of Directors approved stock option or restricted stock plan in each case for the benefit of the Corporation's employees, directors or consultants to the extent that such grants or issuances amount in the aggregate for all such grants and issuances to less than 57 shares of Common Stock (subject to adjustment for stock splits, reorganizations, stock dividends, and the like).

(c) Other Voting Rights. The holders of the Series A Preferred and Series B Preferred shall be entitled to notice of all shareholders' meetings in accordance with the Corporation's Bylaws, and except in the election of directors pursuant to Section 5 (a) above, matters adversely affecting the holders of the Series A Preferred or Series B Preferred and as otherwise required by these Articles of Incorporation or by applicable law, the holders of the Series A Preferred and Series B Preferred shall be entitled to vote on all matters submitted to the shareholders for a vote together with the holders of Common Stock and Series A Preferred and Series B Preferred, all voting together as a single class with each share of Common Stock entitled to one vote per share, each share of the Series A Preferred entitled to one vote for each share of Common Stock issuable upon conversion of the Series A Preferred and each share of the Series B Preferred entitled to one vote for each share of Common Stock issuable upon conversion of the Series B Preferred as of the record date for such vote or, if no record date is specified, as of the date of such vote.

Section 6. Conversion.

(a) Conversion Procedure.

(i) At any time and from time to time, any holder of the Series A Preferred may convert all or any portion of the Series A Preferred (including any fraction of a share of Series A Preferred) held by such holder into a number of shares of Series A Conversion Stock computed by multiplying the number of shares of Series A Preferred to be converted by \$20,000.00 and dividing the result by the Conversion Price then in effect, and at any time and from time to time, any holder of the Series B Preferred may convert, all or any portion of the Series B Preferred (including any fraction of a share of Series B Preferred) held by such holder into a number of Series B Conversion Stock computed by multiplying the number of shares of Series B Preferred to be converted by \$25,833.33 and dividing the result by the Conversion Price then in effect.

(ii) Except as otherwise provided herein, each conversion of the Series A Preferred and Series B Preferred shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series A

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Preferred and Series B Preferred to be converted have been surrendered for conversion at the principal office of the Corporation. At the time any such conversion has been effected, the rights of the holder of the shares of Series A Preferred converted and the rights of the holder of the shares of Series B Preferred converted shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Series A Conversion Stock or Series B Conversion Stock, as applicable, are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Series A Conversion Stock or Series B Conversion Stock represented thereby, as applicable.

(iii) The conversion rights of any share of Series A Preferred subject to redemption hereunder shall terminate on the Redemption Date for such share of Series A Preferred unless the Corporation has failed to pay to the holder thereof the applicable Redemption Value of such share of Series A Preferred (plus all accrued and unpaid dividends thereon and any premium payable with respect thereto); and the conversion rights of any share of Series B Preferred subject to redemption hereunder shall terminate on the Redemption Date for such share of Series B Preferred unless the Corporation has failed to pay the holder thereof the applicable Redemption Value of such share of Series B Preferred (plus all accrued and unpaid dividend thereon and any premium payable with respect thereto).

(iv) Notwithstanding any other provision hereof, if a conversion of the Series A Preferred or Series B Preferred is to be made in connection with a Qualified Public Offering, a Change in Ownership, a Fundamental Change or other transaction affecting the Corporation, the conversion of any shares of the Series A Preferred or Series B Preferred may, at the election of the holder thereof, be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated.

(v) As soon as possible after a conversion has been effected (but in any event within five (5) business days in the case of subsection 6(h) below), the Corporation shall deliver to the converting holder:

(1) a certificate or certificates representing the number of shares of Series A Conversion Stock or Series B Conversion Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(2) payment in an amount equal to all accrued dividends with respect to each share of Series A Preferred and Series B Preferred converted which have not been paid prior thereto, plus the amount payable under subsection (x) below with respect to such conversion; and

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(3) a certificate representing any shares of the Series A Preferred or Series B Preferred which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(vi) If for any reason the Corporation is unable to pay any portion of the accrued and unpaid dividends on the Series A Preferred and Series B Preferred being converted, such dividends may, at the converting holder's option, be converted into an additional number of shares of Series A Conversion Stock or Series B Conversion Stock, as applicable, determined for such purpose, by the Conversion Price then in effect.

(vii) The issuance of certificates for shares of Series A Conversion Stock or Series B Conversion Stock, as applicable, upon conversion of the Series A Preferred or Series B Preferred shall be made without charge to the holders of such Series A Preferred or Series B Preferred for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Series A Conversion Stock or Series B Conversion Stock. Upon conversion of each share of the Series A Preferred and Series B Preferred, the Corporation shall take all such actions as are necessary in order to insure that the Series A Conversion Stock or Series B Conversion Stock, as applicable, issuable with respect to such conversion shall be validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof.

(viii) The Corporation shall not close its books against the transfer of the Series A Preferred, or Series B Preferred or of Series A Conversion Stock or Series B Conversion Stock, as applicable, issued or issuable upon conversion of the Series A Preferred or Series B Preferred in any manner which interferes with the timely conversion of the Series A Preferred or Series B Preferred. The Corporation shall assist and cooperate with any holder of shares of Series A Preferred, or Series B Preferred required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of shares of Series A Preferred or Series B Preferred hereunder (including, without limitation, making any filings required to be made by the Corporation).

(ix) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Series A Conversion Stock and Series B Conversion Stock, solely for the purpose of issuance upon the conversion of the Series A Preferred and Series B Preferred, such number of shares of Series A Conversion Stock and Series B Conversion Stock issuable upon the conversion of all of the outstanding Series A Preferred and Series B Preferred. All shares of Series A Conversion Stock and Series B Conversion Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of Series A Conversion Stock and Series B Conversion Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic

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securities exchange upon which shares of Series A Conversion Stock and Series B Conversion Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action which would cause the number of authorized but unissued shares of Series A Conversion Stock or Series B Conversion Stock to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Series A Preferred and Series B Preferred.

(x) If any fractional interest in a share of Series A Conversion Stock or Series B Conversion Stock would, except for the provisions of this subparagraph, be delivered upon any conversion of the Series A Preferred or Series B Preferred, the Corporation, in lieu of delivering the fractional share therefor, shall pay an amount to the holder thereof equal to the Market Price of such fractional interest as of the date of conversion.

(xi) If the shares of Series A Conversion Stock or Series B Conversion Stock issuable by reason of conversion of the Series A Preferred or Series B Preferred are convertible into or exchangeable for any other stock or securities of the Corporation, the Corporation shall, at the converting holder's option, upon surrender of the shares of Series A Preferred or Series B Preferred to be converted by such holder as provided herein together with any notice, statement or payment required to effect such conversion or exchange of Series A Conversion Stock or Series B Conversion Stock, deliver to such holder or as otherwise specified by such holder a certificate or certificates representing the stock or securities into which the shares of Series A Conversion Stock or Series B Conversion Stock issuable by reason of such conversion are so convertible or exchangeable, registered in such name or names and in such denomination or denominations as such holder has specified.

(b) Conversion Price.

(i) The initial Conversion Price of the Series A Preferred shall be \$20,000.00, and the initial Conversion Price of the Series B Preferred shall be \$25,833.33. In order to prevent dilution of the conversion rights granted under this Section 6, the Conversion Price shall be subject to adjustment from time to time pursuant to this Section 6(b).

(ii) If and whenever on or after the original date of issuance of the Series A Preferred or Series B Preferred the Corporation issues or sells, or in accordance with Section 6(c) is deemed to have issued or sold, any share of Common Stock or other capital stock for a consideration per share less than the Conversion Price, in effect immediately prior to such time, then immediately upon such issue or sale or deemed issue or sale, the Conversion Price shall be reduced to the lowest net price per share at which any such share of Common Stock or other capital stock has been issued or sold or is deemed to have been issued or sold. Notwithstanding the foregoing, any issuance or sale of securities at a price higher than the then effective Conversion Price of the Series

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A Preferred (for example, as of the date hereof the sale of Common Stock at \$22,000.00 per share) will not cause any upward adjustment in the Conversion Price of the Series A Preferred, and any issuance or sale of securities at a price higher than the then effective Conversion Price of the Series B Preferred (for example, as of the date hereof the sale of Common Stock at \$27,000.00 per share) will not cause any upward adjustment in the Conversion Price of the Series B Preferred.

(iii) Notwithstanding the foregoing, there shall be no adjustment to the Conversion Price hereunder with respect to the issuance or sale by the Corporation of capital stock pursuant to or in connection with: (1) a Qualified Public Offering; (2) Options issued to employees or directors approved by a disinterested majority of the Corporation's Board of Directors and the holders of a majority of the outstanding shares of the Series A Preferred Stock and the holders of a majority of the outstanding shares of Series B Preferred Stock; (3) the Series A Conversion Stock, the Series B Conversion Stock or other Convertible Securities outstanding as of July 6, 2000.

(c) Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price under Section 6(b), and subject to the exclusions set forth in Section (b)(iii), the following shall be applicable:

(i) Issuance of Rights or Options. Except as set forth in Subsection (b) (iii) of this Section 6, if the Corporation in any manner grants or sells any Option and the lowest price per share for which any one share of Common Stock or other Junior Security is issuable upon the exercise of any such Option, or upon conversion or exchange of any Convertible Security issuable upon exercise of any such Option, is less than the Conversion Price, in effect immediately prior to the time of the granting or sale of such Option, then such share of Common Stock or other Junior Security shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Option for such price per share. For purposes of this paragraph, the "lowest price per share for which any one share of Common Stock or other Junior Security is issuable" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock or other Junior Security upon the granting or sale of the Option, upon exercise of the Option and upon conversion or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or other Junior Security or such Convertible Security upon the exercise of such Options or upon the actual issue of such Common Stock or other Junior Security upon conversion or exchange of such Convertible Security.

(ii) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Security and the lowest price per share for which any one share of Common Stock or Junior Security is issuable upon conversion or exchange thereof is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then such share of Common Stock or other Junior Security shall be

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deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "lowest price per share for which any one share of Common Stock or other Junior Security is issuable" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock or other Junior Security upon the issuance or sale of the Convertible Security and upon the conversion or exchange of such Convertible Security. No further adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or Junior Security upon conversion or exchange of any Convertible Security, and if any such issue or sale of such Convertible Security is made upon exercise of any Options for which adjustments of the Conversion Price had been or are to be made pursuant to other provisions of this Section 6, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(iii) Reduction in Option Price or Conversion Rate. If the purchase price provided for in any Option, the additional consideration (if any) payable upon the issue, conversion or exchange of any Convertible Security or the rate at which any Convertible Security is convertible into or exchangeable for Common Stock or other Junior Security is lowered at any time, the Conversion Price in effect at the time of such change shall be adjusted immediately to the Conversion Price which would have been in effect at such time had such Option or Convertible Security originally provided for such lowered purchase price, consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; *provided that* no such change shall at any time cause the purchase price to be increased. For purposes of Section 6(c), if the terms of any Option or Convertible Security which was outstanding as of the date of issuance of the Series A Preferred are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and Common Stock or Junior Security deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change; *provided that* no such change shall at any time cause the Conversion Price hereunder to be increased.

(iv) Treatment of Expired Options and Unexercised Convertible Securities. Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Security without the exercise of any such Option or right, the Conversion Price then in effect hereunder shall be adjusted immediately to the Conversion Price, as applicable, which would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued; *provided that* if such expiration or termination would result in an increase in the Conversion Price then in effect, such increase shall not be effective until thirty (30) days after written notice thereof has been given to all holders of the Series A Preferred and Series B Preferred. For purposes of Section 6(c), the expiration or termination of any Option or Convertible Security which was outstanding as of the date of issuance of the Series A Preferred shall not cause the Conversion Price hereunder to be adjusted unless, and only to the extent that, a change in the terms of such Option or Convertible Security

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caused it to be deemed to have been issued after the date of issuance of the Series A Preferred.

(v) Calculation of Consideration Received. If any Common Stock or shares of other capital stock, Option or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor (net of discounts, commissions and related expenses). If any Common Stock or shares of other capital stock, Option or Convertible Security is issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Corporation shall be the Market Price thereof as of the date of receipt. If any Common Stock or shares of other capital stock, Option or Convertible Security is issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock or shares of other capital stock, Option or Convertible Security, as the case may be. The fair value of any consideration other than cash and securities shall be determined jointly by the Corporation and the holders of a majority of the outstanding Series A Preferred and the holders of a majority of the outstanding Series B. If such parties are unable to reach agreement within a reasonable period of time, the fair value of such consideration shall be determined by an independent appraiser experienced in valuing such type of consideration mutually selected by the Corporation and the holders of a majority of the outstanding Series A Preferred and the holders of a majority of the outstanding Series B. The determination of such appraiser shall be final and binding upon the parties, and the fees and expenses of such appraiser shall be borne by the Corporation.

(vi) Integrated Transactions. In case any Option is issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties thereto, the Option shall be deemed to have been issued for a consideration of \$.001.

(vii) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(viii) Record Date. If the Corporation takes a record of the holders of Common Stock for the purpose of entitling them: (1) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities; or (2) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common

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Stock deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(d) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and if the Corporation at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

(e) Reorganization, Reclassification, Consolidation, Merger or Sale. Any recapitalization, reorganization, reclassification, consolidation, merger, or sale of all or substantially all of the Corporation's assets or other transaction, in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, is referred to herein as an "Organic Change". Prior to the consummation of any Organic Change, the Corporation shall make appropriate provisions (in form and substance reasonably satisfactory to the holders of a majority of the Series A Preferred then outstanding and the holders of a majority of the Series B Preferred then outstanding) to insure that each of the holders of the Series A Preferred and Series B Preferred shall thereafter have the right to acquire and receive, in lieu of or in addition to (as the case may be) the shares of Series A Conversion Stock or Series B Conversion Stock, as applicable, immediately theretofore acquirable and receivable upon the conversion of such holder's Series A Preferred or Series B Preferred, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted its Series A Preferred or Series B Preferred immediately prior to such Organic Change. In each such case, the Corporation shall also make appropriate provisions (in form and substance reasonably satisfactory to the holders of a majority of the Series A Preferred then outstanding and the holders of a majority of the Series B Preferred then outstanding) to insure that the provisions of this Section 6 and Sections 7 and 8 hereof shall thereafter be applicable to the Series A Preferred and Series B Preferred (including, in the case of any such consolidation, merger or sale in which the successor entity or purchasing entity is other than the Corporation, an immediate adjustment of the Conversion Price to the value for Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Series A Conversion Stock or Series B Conversion Stock, as applicable, acquirable and receivable upon conversion of the Series A Preferred or Series B Preferred, if the value so reflected is less than the Conversion Price, in effect immediately prior to such consolidation, merger or sale). The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor entity (if other than the Corporation) resulting from consolidation or merger or the entity purchasing such assets assumes by written instrument (in form and

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substance satisfactory to the holders of a majority of the Series A Preferred then outstanding and the holders of a majority of the Series B Preferred then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(f) Certain Events. If any event occurs of the type contemplated by the provisions of this Section 6 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of the Series A Preferred and Series B Preferred; *provided that* no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this Section 6 or decrease the number of shares of Series A Conversion Stock or Series B Conversion Stock issuable upon conversion of each share of the Series A Preferred or Series B Preferred.

(g) Notices.

(i) Immediately upon any adjustment of the Conversion Price, the Corporation shall give written notice thereof to all holders of the Series A Preferred and Series B Preferred, setting forth in reasonable detail and certifying the calculation of such adjustment.

(ii) The Corporation shall give written notice to all holders of the Series A Preferred and Series B Preferred at least twenty (20) days prior to the date on which the Corporation closes its books or takes a record: (1) with respect to any dividend or distribution upon Common Stock; (2) with respect to any pro rata subscription offer to holders of Common Stock; or (3) for determining rights to vote with respect to any Organic Change, dissolution or liquidation.

(iii) The Corporation shall also give written notice to the holders of the Series A Preferred and Series B Preferred at least twenty (20) days prior to the date on which any Organic Change shall take place.

(h) Mandatory Conversion. The Corporation may at any time require the conversion of all of the outstanding shares of Series A Preferred if: (i) the Corporation is at such time effecting a Qualified Public Offering; or (ii) at any time the holders of a majority of the then outstanding shares of Series A Preferred elect to convert their shares of Series A Preferred into Common Stock. The Corporation may at any time require the conversion of all of the outstanding shares of Series B Preferred if: (i) the Corporation is at such time effecting a Qualified Public Offering; or (ii) at any time the holders of a majority of the then outstanding shares of Series B Preferred elect to convert their shares of Series B Preferred into Common Stock. Any such mandatory conversion shall only be effected at the time of and subject to: (1) as to conversion under either subsections (i) above, the closing of the sale of such shares pursuant to such Qualified Public Offering;

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or (2) as to conversion under either subsections (ii) above, the surrender for conversion at the principal office of the Corporation of the certificate or certificates representing the Series A Preferred or Series B Preferred, as applicable, to be converted, and upon written notice of such mandatory conversion delivered to all holders of the Series A Preferred and Series B Preferred at least ten (10) days prior to such closing or surrender.

Section 7. Liquidating Dividends.

If the Corporation declares or pays a dividend upon Common Stock payable otherwise than in cash out of earnings or earned surplus (determined in accordance with generally accepted accounting principles, consistently applied) except for a stock dividend payable in shares of Common Stock (a "Liquidating Dividend"), then the Corporation shall pay to the holders of the Series A Preferred and Series B Preferred at the time of payment thereof the Liquidating Dividends which would have been paid on the shares of Series A and Series B Conversion Stock had such Series A Preferred or Series B Preferred been converted immediately prior to the date on which a record is taken for such Liquidating Dividend, or, if no record is taken, the date as of which the record holders of Common Stock entitled to such dividends are to be determined.

Section 8. Purchase Rights.

If at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "Purchase Rights"), then each holder of the Series A Preferred and Series B Preferred shall be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Series A Conversion Stock or Series B Conversion Stock, as applicable, acquirable upon conversion of such holder's Series A Preferred or Series B Preferred immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

Section 9. Events of Noncompliance.

(a) **Definition.** If any of the following shall have occurred and the Corporation shall have received notice from any holder of the Series A Preferred or Series B Preferred, an Event of Noncompliance shall have occurred:

(i) the Corporation fails to pay on any date of payment for any dividend the full amount of dividends then accrued on the Series A Preferred or Series B Preferred, whether or not such payment is legally permissible or is prohibited by any agreement to which the Corporation is subject;

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(ii) the Corporation fails to make any redemption payment with respect to the Series A Preferred or Series B Preferred which it is required to make hereunder, whether or not such payment is legally permissible or is prohibited by any agreement to which the Corporation is subject;

(iii) the Corporation breaches or otherwise fails to perform or observe any other material covenant or material agreement set forth herein or in the Purchase Agreement, the Series B Purchase Agreement, the Registration Rights Agreement or in any other agreement between any of the Series A Preferred or Series B Preferred holders and the Corporation, and the Corporation continues to do so for thirty (30) days;

(iv) any material representation or material warranty contained in the Purchase Agreement or the Series B Purchase Agreement or required to be furnished to any holder of the Series A Preferred or Series B Preferred pursuant to the Purchase Agreement or the Series B Purchase Agreement or any other agreement between any holder of Series A Preferred or Series B Preferred and the Corporation, or any information contained in writing furnished by the Corporation or any Subsidiary to any holder of the Series A Preferred or Series B Preferred prior to the date of the Purchase Agreement, is false or misleading in any material respect on the date made or furnished;

(v) the Corporation or any 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 proceeding is not dismissed within sixty (60) days; or

(vi) the Corporation's chief executive officer (as of the date of the Series B Purchase Agreement) shall cease to be employed by the Corporation for any reason and is not replaced within one hundred twenty (120) days by the approval of a majority of the Board of Directors, including the director elected pursuant to Section 5(a), if any, and that director's approval shall not be unreasonably withheld.

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(b) Consequences of Events of Noncompliance.

(i) If an Event of Noncompliance of the type described in Section 9(a)(iii) has occurred and continued for a period of thirty (30) days or any other Event of Noncompliance has occurred and is continuing, the holder or holders of a majority of either (x) the Series A Preferred or (y) the Series B Preferred, then outstanding may demand (by written notice delivered to the Corporation) immediate redemption of all or any portion of the Series A Preferred or Series B Preferred, as applicable, owned by such holder or holders at a price per share equal to the Liquidation Value thereof (plus all accrued and unpaid dividends thereon). The Corporation shall give prompt written notice of such election to the other holders of the Series A Preferred or Series B Preferred (but in any event within five (5) days after receipt of the initial demand for redemption), and each such other holder may demand immediate redemption of all or any portion of such holder's Series A Preferred or Series B Preferred, as applicable, by giving written notice thereof to the Corporation within seven days after receipt of the Corporation's notice. The Corporation shall redeem all of the Series A Preferred and Series B Preferred as to which rights under this paragraph have been exercised within fifteen (15) days after receipt of the initial demand for redemption.

(ii) If an Event of Noncompliance of the type described in Section 9(a)(v) has occurred, all of the Series A Preferred and Series B Preferred then outstanding shall be immediately redeemed by the Corporation (without any action on the part of the holders of the Series A Preferred or Series B Preferred) at a price per share equal to the Liquidation Value thereof (plus all accrued and unpaid dividends thereon). The Corporation shall immediately redeem all of the Series A Preferred and Series B Preferred upon the occurrence of such Event of Noncompliance.

(iii) If any Event or Events of Noncompliance exist for an aggregate of ninety (90) days (whether or not such days are consecutive), the Conversion Price of the Series A Preferred and Series B Preferred shall be reduced immediately by ten percent (10%) of the Conversion Price in effect immediately prior to such adjustment (the "First Adjustment"). If any Event or Events of Noncompliance exist for an aggregate of ninety (90) days after the First Adjustment (whether or not such days are consecutive and whether or not such days immediately follow the First Adjustment), the Conversion Price shall be reduced immediately by twenty percent (20%) of what the Conversion Price would have been immediately prior to such adjustment if the First Adjustment had not been made (the "Second Adjustment"). If any Event or Events of Noncompliance exist for an aggregate of ninety (90) days after the Second Adjustment (whether or not such days are consecutive and whether or not such days immediately follow the Second Adjustment), the Conversion Price shall be reduced immediately by thirty percent (30%) of what the Conversion Price would have been immediately prior to such adjustment if the First and Second Adjustments had not been made. In no event shall any Conversion Price adjustment be rescinded, and in no event shall there be more than three (3) Conversion Price adjustments pursuant to this subparagraph.

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For example, assume that the Conversion Price of the Series A Preferred or Series B Preferred is \$1.00. If Events of Noncompliance are in existence for an aggregate of ninety (90) days, the Conversion Price would be reduced immediately by ten percent (10%) of \$1.00, or \$.10, for a new Conversion Price of \$.90. If Events of Noncompliance exist for an additional ninety (90) days, the existing Conversion Price would be reduced by twenty percent (20%) of what the Conversion Price would have been if there had been no previous adjustment pursuant to this paragraph (i.e., \$1.00), or \$.20, for a new Conversion Price of \$.80. Then assume that there is a two-for-one stock split, in which case the Conversion Price would be decreased hereunder from \$.80 to \$.40, and assume that Events of Noncompliance exist for an additional ninety (90) days. In this case, the Conversion Price would be reduced by thirty percent (30%) of what the Conversion Price would have been immediately prior to such adjustment if there had been no previous adjustments pursuant to this paragraph (i.e. \$.50), for a new Conversion Price of \$.35.

(iv) If any Event of Noncompliance of the type described in Sections 2(a)(i), (ii) or (iii) has occurred and has continued for sixty (60) days or any other Event of Noncompliance has occurred and is continuing, the number of directors constituting the Board of Directors shall, at the request of the holder or holders of a majority of the Series A Preferred and a majority of the Series B Preferred Stock then outstanding, be increased by such number which shall constitute a minimum majority of the Board of Directors (the "Additional Directors") and the holders of the Series A Preferred and Series B Preferred Stock shall have the special right, 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, with the holders of a majority of the outstanding Series A Preferred (voting as a separate class) entitled to elect a simple majority of such Additional Directors and the holders of a majority of the outstanding Series B Preferred (voting as a separate class) entitled to elect the remaining members of such Additional Directors. The special right of the holders of the Series A Preferred and Series B Preferred Stock to elect members of the Board of Directors may be exercised at the special meeting called pursuant to this subsection (iv), 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, at which time such special right shall terminate and the composition of the Board of Director shall return to the same composition as it was prior to the exercise of such special right, subject to revesting of the special right upon the occurrence and continuation of any Event of Noncompliance which gives rise to such special right hereunder. Appropriate amendments shall automatically be made to the Corporation's Bylaws to provide for the undertakings contemplated by this subsection (iv).

At any time when such special right has vested in the holders of the Series A Preferred and Series B Preferred Stock, a proper officer of the Corporation shall, upon the written request of the holder of at least ten percent (10%) of the Series A Preferred

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and at least 10% of the Series B Preferred Stock then outstanding, addressed to the secretary of the Corporation, call a special meeting of the holders of the Series A Preferred and Series B 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 holders of at least ten percent (10%) of the Series A Preferred and ten percent (10%) of the Series B Preferred Stock then outstanding. 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 holders of at least ten percent (10%) of the Series A Preferred and ten percent (10%) of the Series B Preferred Stock then outstanding 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 holders of at least ten percent (10%) of the Series A Preferred and ten percent (10%) of the Series B Preferred Stock then outstanding. Any holder of the Series A Preferred or Series B 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.

At any meeting or at any adjournment thereof at which the holders of the Series A Preferred or Series B Preferred Stock have the special right to elect directors, the presence, in person or by proxy, of the holders of a majority of the Series A Preferred and a majority of Series B Preferred Stock then outstanding shall be required to constitute a quorum for the election or removal of any director by the holders of the Series A Preferred and Series B Preferred Stock exercising such special right. The vote of a majority of each of the Series A holders and Series B holders constituting such quorum shall be required to elect or remove any such director.

Any director so elected by the holders of the Series A Preferred and Series B Preferred Stock shall continue to serve as a director until the expiration of the lesser of: (a) a period of six (6) months following the date on which there is no longer any Event of Noncompliance in existence; or (b) the remaining period of the full term for which such director has been elected. After the expiration of such six (6) 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 directors of the Corporation shall decrease to such number as constituted the whole board of directors of the Corporation immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to the special right to elect directors.

(v) If any Event of Noncompliance exists, each holder of the Series A Preferred and Series B Preferred Stock shall also have any other rights which such holder

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is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

Section 10. Registration of Transfer.

The Corporation shall keep at its principal office a register for the registration of the Series A Preferred and Series B Preferred. Upon the surrender of any certificate representing the Series A Preferred or Series B Preferred at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of Series A Preferred and Series B Preferred represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares of Series A Preferred and Series B Preferred as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Series A Preferred and Series B Preferred represented by such new certificate from the date to which dividends have been fully paid on such Series A Preferred and Series B Preferred represented by the surrendered certificate.

Section 11. Replacement.

Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of the Series A Preferred or Series B Preferred, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Series A Preferred or Series B Preferred represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series A Preferred or Series B Preferred represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 12. Definitions.

"Change in Ownership" has the meaning set forth in Section 4(f)(i) hereof.

"Common Stock" means, collectively, the Corporation's common stock, par value \$0.005, and any capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the

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rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation.

"Common Stock outstanding" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Sections 6(c)(i) and 6(c)(ii) hereof whether or not the Options or Convertible Securities are actually exercisable at such time.

"Convertible Securities" means any stock or securities directly or indirectly convertible into or exchangeable for Common Stock or other Junior Security.

"Fundamental Change" has the meaning set forth in Section 4(f)(ii) hereof.

"Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series A Preferred and Series B Preferred.

"Liquidation Value" of any share of Series A Preferred as of any particular date shall be equal to \$20,000.00, and the "Liquidation Value" of any share of Series B Preferred as of any particular date shall be equal to \$25,833.33.

"Market Price" of any security means the average of the closing prices of such security's sales on all securities exchanges on which such security may at the time be listed, or, if there has been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the Nasdaq System as of 4:00 P.M., New York time, or, if on any day such security is not quoted in the Nasdaq System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of twenty-one (21) days consisting of the day as of which "Market Price" is being determined and the twenty (20) consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted in the Nasdaq System or the over-the-counter market, the "Market Price" shall be the fair value thereof determined jointly by the Corporation and the holders of a majority of the Series A Preferred as to the value of Series A Preferred or securities to be exchanged for the Series A Preferred and the holders of a majority of the Series B Preferred as to the value of the Series B Preferred or securities to be exchanged for the Series B Preferred. If such parties are unable to reach agreement within a reasonable period of time, such fair value shall be determined by an independent appraiser experienced in valuing securities jointly selected by the Corporation and the holders of a majority of the Series A Preferred as to the value of the Series A Preferred or securities to be exchanged for the Series A Preferred, and the holders of a majority of the Series B Preferred as to the value of the Series B Preferred or securities to be exchanged for the

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Series B Preferred. The determination of such appraiser shall be final and binding upon the parties, and the Corporation shall pay the fees and expenses of such appraiser.

"Options" means any rights, warrants, options or the like to subscribe for or purchase Common Stock, Junior Securities, or Convertible Securities.

"Person" means an individual, a partnership, a corporation, a limited liability company, a limited liability, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Purchase Agreement" means the First Amended and Restated Securities Purchase Agreement, dated as of December, 2000, by and among the Corporation and certain investors, as such agreement may from time to time be amended in accordance with its terms.

"Qualified Public Offering" means any offering by the Corporation of its capital stock or equity securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force, in which the price paid by the public for each share of capital stock or equity security is at least \$60,000 (adjusted for stock splits or stock dividends) and the aggregate net proceeds to the Corporation from the sale of all such shares is not less than \$20 million. A Qualified Public Offering shall be deemed to have occurred upon the effectiveness of the registration statement filed with respect to such offering, subject to such Qualified Public Offering having been deemed to have occurred and being reversed and nullified if the closing of the sale of such shares pursuant to such offering does not occur within ten (10) business days after such effectiveness.

"Registration Rights Agreement" means the Amended and Restated Registration Rights Agreement as defined in the Series B Purchase Agreement.

"Redemption Date" as to any share of Series A Preferred or Series B Preferred means the date specified in the notice of any redemption at the holder's option or the applicable date specified herein in the case of any other redemption; *provided that* no such date shall be a Redemption Date unless the applicable Redemption Value of such share of Series A Preferred or Series B Preferred, as applicable, (plus all accrued and unpaid dividends thereon and any required premium with respect thereto) is actually paid in full on such date, and if not so paid in full, the Redemption Date shall be the date on which such amount is fully paid.

"Series A Conversion Stock" means shares of the Corporation's Common Stock issuable upon conversion of the Series A Preferred; *provided that* if there is a change such that the securities issuable upon conversion of the Series A Preferred are issued by an entity other than the Corporation or there is a change in the type or class of securities

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so issuable, then the term Series A "Conversion Stock" shall mean one share of the security issuable upon conversion of the Series A Preferred if such security is issuable in shares, or shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

"Series A Preferred Stock" means the Company's Series A Convertible Preferred Stock as described herein.

"Series B Conversion Stock" means shares of the Corporation's Common Stock issuable upon conversion of the Series B Preferred; *provided that* if there is a change such that the securities issuable upon conversion of the Series B Preferred are issued by an entity other than the Corporation or there is a change in the type or class of securities so issuable, then the term "Conversion Stock" shall mean one share of the security issuable upon conversion of the Series B Preferred if such security is issuable in shares, or shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

"Series B Preferred Stock" means the Company's Series B Convertible Preferred Stock as described herein.

"Series B Purchase Agreement" means the Series B Preferred Stock Purchase Agreement dated December, 2000, by and between the Corporation and Cobalt Networks, Inc., as such agreement may be from time to time amended in accordance with its terms.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability company, partnership, association or other business entity.

Section 13. Amendment and Waiver.

No amendment, modification or waiver shall be binding or effective with respect to any provision of Sections 1 to 14 hereof without the prior written consent of the

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holders of a majority of the Series A Preferred and a majority of the Series B Preferred outstanding at the time such action is taken, each voting as a separate class; *provided that* no such action shall change: (a) the manner in which dividends on the Series A Preferred or Series B Preferred accrue or the times at which such dividends become payable or the amount payable on redemption of the Series A Preferred or Series B Preferred or the times at which redemption of the Series A Preferred or Series B Preferred is to occur, without the prior written consent of the holders of at least two-thirds of both the Series A Preferred then outstanding and two-thirds of the Series B Preferred then outstanding, each voting as a separate class; (b) the Conversion Price of the Series A Preferred or Series B Preferred or the number of shares or class of stock into which the Series A Preferred or Series B Preferred is convertible, without the prior written consent of the holder of at least two-thirds of the Series A Preferred then outstanding and two-thirds of the Series B Preferred then outstanding, each voting as a separate class; or (c) the percentage required to approve any change described in clauses (a) and (b) above, without the prior written consent of the holders of at least two-thirds of the Series A Preferred then outstanding and two-thirds of the Series B Preferred then outstanding, each voting as a separate class; and provided further that no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of the applicable percentage of the Series A Preferred and Series B Preferred then outstanding, each voting as a separate class.

Section 14. Notices.


Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, or by reputable overnight courier service, charges prepaid, and shall be deemed to have been given when so mailed or sent (i) to the Corporation, at its principal executive offices and (ii) to any shareholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

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IN WITNESS WHEREOF, the undersigned, has executed these Second Articles
of Amendment to the Articles of Incorporation this 4 day of September, 2000.

DIALTONE, INC.

By: 
ALVARO ALBARRACIN,
President

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