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BASIC AMENDMENT

AERO PHARMACEUTICALS, INC.

Certificate of Status	0
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Amend 4-13-05/jm

ARTICLES OF AMENDMENT
TO ARTICLES OF INCORPORATION
OF AERO PHARMACEUTICALS, INC.

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1. The name of the Corporation is Aero Pharmaceuticals, Inc. (the "Corporation").

2. Article III of the Articles of Incorporation of the Corporation is hereby amended to reflect that the date upon which the Company has the right to convert Series B Preferred Stock to Common Stock has been changed to January 1, 2007, in Exhibit "C" attached hereto and incorporated herein by reference,

5. The foregoing amendment was adopted by written consent of all of the Members of the Board of Directors of the Company on January 17, 2005.

6. The foregoing amendment was approved by written consent of a majority of the shareholders of the Corporation eligible to vote and the number of votes cast is sufficient for approval.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment to Articles of Incorporation this 17th day of January, 2005.



Richard L. Alol
Chief Executive Officer
and Director

EXHIBIT C**AERO PHARMACEUTICALS, INC.
Series B Preferred Stock, No Par Value****Statement of Rights and Preferences**

The preferences, limitations, voting powers and relative rights granted to and imposed on the Series B Preferred Stock (the "Series B Preferred") of Aero Pharmaceuticals, Inc. (the "Corporation"), which series shall consist of 10,000,000 shares, are as set forth below. The following preferences, limitations, voting powers and relative rights of the Series B Preferred are subject to designation by the Board of Directors of the Corporation (the "Board"), and of any subsequent series of Preferred Stock, as defined in the Articles of Incorporation as amended (the "Articles"), pursuant to authority granted by the Articles, and to the terms of the Series A Preferred Stock any such subsequent series of Preferred Stock.

1. Designation And Amount.

The shares of such series shall be designated as "Series B Preferred Stock" and the authorized number of such shares shall be 10,000,000.

2. Dividend Rights.

The holders of Series B Preferred Stock shall be entitled to dividends only if, when and to the extent declared by the board of directors on the Series B Preferred Stock.

3. Voting Rights.

(a) **General Rights.** Except as provided in Section 3(b), the holders of shares of the Series B Preferred shall not be entitled to vote.

(b) **Separate Vote of Series B Preferred.** For so long as shares of Series B Preferred remain outstanding, in addition to any other vote or consent required by law, the vote or written consent of the holders of at least 80% of the outstanding Series B Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration or repeal of any provision of the Articles or the Bylaws of the Corporation (including any filing of a Certificate of Designation), that alters or changes the powers, preferences or other rights, privileges, or restrictions of the Series B Preferred;

(ii) A change to the number of authorized shares of Series B Preferred Stock.

4. Liquidation Rights.

(a) Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "Liquidation Event"), before any distribution or payment shall be made to

the holders of any Common Stock, the holders of Series B Preferred, subject to the rights of holders of Series A Preferred Stock and any other series of Preferred Stock that have rights equal to or superior to the right of holders of Series B Preferred with respect to the distribution of assets upon a Liquidation Event, shall be entitled to be paid out of the assets of the Corporation legally available for distribution, or the consideration received in such transaction, an amount per share of Series B Preferred equal to the original issue price of the Shares (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) for each share of Series B Preferred held by them. If, upon any Liquidation Event, the assets of the Corporation (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 4(a), then such assets (or consideration) shall be distributed among the holders of Series B Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) Subject to the rights of the holders of shares of Series A Preferred Stock and any other series of Preferred Stock then outstanding that have rights ranking equal to or superior to the rights of holders of the Series B Preferred with respect to distribution of assets upon a Liquidation Event, after the payment of the full liquidation preference of the Series B Preferred as set forth in Section 4(a) above, and any other series of Preferred Stock with rights ranking equal to the Series B Preferred with respect to distribution of assets upon a Liquidation Event have been paid in full their respective liquidation preferences, the assets of the Corporation legally available for distribution in such Liquidation Event (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock, Series A Preferred Stock and Series B Preferred Stock on an as-converted to Common Stock basis.

(c) The "original issue price" of the Series B Preferred shall be \$2.00.

5. Automatic Conversion.

(a) In the event of a Change in Control, the holders of the Series B Preferred shall be automatically converted into a fully paid and non-assessable share of Common Stock on a one-to-one basis.

(b) For the purposes of this Section 5 "Change in Control" shall mean

(i) the acquisition (other than from the Company) by any person, entity or "group", within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act, of more than 50% of either the then outstanding shares of the Company's Common Stock or the combined voting power of the Company's then outstanding voting securities entitled to vote generally in the election of directors (hereinafter referred to as the ownership of a "Controlling Interest") excluding, for this purpose, any acquisitions by (A) the Company or its Subsidiaries, (B) any person, entity or "group" that as of the date of this Amendment owns beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act) of a Controlling Interest or (C) any employee benefit plan of the Company or its Subsidiaries.

(ii) closing of a reorganization, merger, consolidation or other form of corporate transaction or series of transactions, in each case, with respect to which persons who

were the shareholders of the Company immediately prior to such reorganization, merger or consolidation or other transaction do not, immediately thereafter, own more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated company's then outstanding voting securities, in substantially the same proportions as their ownership immediately prior to such reorganization, merger, consolidation or other transaction.

(c) The holders of the Series B Preferred shall be automatically converted into a fully paid and non-assessable share of Common Stock on a one-to-one basis immediately on such date that any of the Company's securities (including the Company's Common Stock) becomes eligible to be publicly traded in either (i) the Pink Sheets LLC; or on the (ii) OTC Bulletin Board; (iii) The Nasdaq SmallCap Market; (iv) The Nasdaq National Market; or (v) any recognized national securities exchange.

6. Optional Conversion Rights.

The holders of the Series B Preferred and the Company shall have the following rights with respect to the conversion of the Series B Preferred into shares of Common Stock (the "Conversion Rights"):

(a) **Holder's Option to Convert.** Subject to and in compliance with the provisions of this Section 6, any shares of Series B Preferred may, at the option of the holder, be converted at any time into fully paid and nonassessable shares of Common Stock. Each share of Series B Preferred shall be entitled to be converted into one share (as adjusted pursuant to Section 8) of Common Stock.

(b) **Company's Option to Convert.** At any time beginning January 1, 2007, the Company shall have the option to convert all Series B Preferred outstanding into Common Stock. If the Company elects to make this conversion, each share of Series B Preferred shall be automatically converted without further action on the part of the holder as of the date of the board resolution into one share (as adjusted pursuant to Section 8) of fully paid and non-assessable Common Stock, as adjusted pursuant to Section 8.

7. Mechanics of Conversions

(a) **Optional conversions.** Each holder of Series B Preferred who desires to convert the same into shares of Common Stock pursuant to Section 6(a) shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series B Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series B Preferred being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared and unpaid dividends on the shares of Series B Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of such conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series B Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series B Preferred to be converted,

and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(b) **Automatic conversions.** In any automatic conversion, the outstanding shares of Series B Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series B Preferred are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series B Preferred, the holders of Series B Preferred shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series B Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series B Preferred surrendered were convertible on the date on which such automatic conversion occurred.

8. Adjustments.

(a) **Adjustment for Stock Splits, Stock Dividends, Stock Distributions and Combinations.** If at any time or from time to time after the date that the first share of Series B Preferred is issued the Corporation effects a subdivision (through split, dividend or other distribution) of the outstanding Common Stock without a corresponding subdivision of the Series B Preferred, the Series B Preferred conversion rate (which is 1:1 as of the date of this amendment) in effect immediately before that subdivision shall be proportionately adjusted. Conversely, if at any time or from time to time after original issuance the Corporation combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series B Preferred, the Series B Preferred conversion rate in effect immediately before the combination shall be proportionately adjusted. Any adjustment under this Section 8(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after original issuance, the Common Stock issuable upon the conversion of the Series B Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a Change of Control as defined in Section 5 or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 8), in any such event each holder of Series B Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series B Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(c) **Reorganizations, Mergers or Consolidations.** If at any time or from time to

time after the Original Issue Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Corporation with or into another corporation or another entity or person (other than a Change of Control as defined in Section 5 or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 8), as a part of such capital reorganization, provision shall be made so that the holders of the Series B Preferred shall thereafter be entitled to receive the number of shares of stock or other securities or property of the Corporation to which a holder of the number of shares of Common Stock deliverable upon conversion of the Series B Preferred would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 8 with respect to the rights of the holders of Series B Preferred after the capital reorganization to the end that the provisions of this Section 8 (including adjustment of the Series B Preferred conversion rate then in effect and the number of shares issuable upon conversion of the Series B Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(d) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series B Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series B Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board) on the date of conversion.

(e) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series B Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(f) **Notices.** Any notice required by the provisions of this Section 8 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.