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**CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):**

1. \_\_\_\_\_ (Corporation Name) \_\_\_\_\_ (Document #) **700002698647-4**
2. \_\_\_\_\_ (Corporation Name) \_\_\_\_\_ (Document #) **-12/01/98-01037-004**
3. \_\_\_\_\_ (Corporation Name) \_\_\_\_\_ (Document #) **\*\*\*\*\*70.00 \*\*\*\*\*35.00**
4. \_\_\_\_\_ (Corporation Name) \_\_\_\_\_ (Document #)

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<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS	
<input checked="" type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A., Officer/ Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

OTHER FILINGS	
<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION/ QUALIFICATION	
<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

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98 DEC -1 AM 8:32  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

12-10-98

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
RIGHT TIME FOODS, INC.

The undersigned, as Secretary of Right Time Foods, Inc., a Florida corporation (the "Corporation"), hereby files the following amendment to the Corporation's Articles of Incorporation in accordance with Section 607.0602, Florida Statutes:

1. The name of the Corporation is Right Time Foods, Inc.
2. The current Articles of Incorporation of the Corporation are hereby amended to include the Designation of Relative Rights and Preferences of the Corporation's Series A Convertible Preferred Stock, par value \$0.01 per share, which is attached hereto as Exhibit A.
3. This amendment to the Corporation's Articles of Incorporation was duly adopted at a meeting of the Corporation's Board of Directors held on November 19, 1998.
4. This amendment was duly adopted by the Corporation's Board of Directors, in accordance with the provisions of Sections 607.0820 and .0824, Florida Statutes, as a quorum of the Corporation's Board of Directors was present at the meeting when the vote was taken to approve the amendment, and a majority of the directors present at the meeting approved of the actions being taken.
5. This amendment was duly adopted by the Corporation's Board of Directors without shareholder action, as shareholder action was not required.

IN WITNESS WHEREOF, the undersigned has executed this certificate effective as of November 23, 1998.

RIGHT TIME FOODS, INC.

By: C. Daniel Hicks  
C. Daniel Hicks, Secretary

FILED  
98 DEC -1 AM 8:32  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**RIGHT TIME FOODS, INC.  
SERIES A CONVERTIBLE PREFERRED STOCK  
DESIGNATION OF  
RELATIVE RIGHTS AND PREFERENCES  
AND OTHER TERMS AS FIXED AND DETERMINED  
BY THE BOARD OF DIRECTORS**

**1. Number of Shares; Designation of Series; Definitions.**

(a) There shall be a series of the class of preferred stock, par value \$0.01 per share (the "Preferred Stock"), of Right Time Foods, Inc., a Florida corporation (the "Company"), consisting of 27,500 shares designated "Series A Convertible Preferred Stock" (hereinafter called this "Series").

(b) For the purposes of this Designation, the following terms shall have the following meanings:

"Business Day" shall mean a day on which the New York Stock Exchange is open for trading.

"Common Stock" shall mean the common stock, par value \$0.01 per share, of the Company.

"Conversion Price" shall have the meaning set forth in Section 3(a).

"Liquidation Preference" shall mean \$45.60 per share of this Series.

"Qualified Public Offering" shall mean a fully underwritten, firm commitment public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale by the Company of Common Stock in which the aggregate net proceeds to the Company, after deducting underwriters' discounts and commissions, equals or exceeds \$5,000,000.

"Quoted Price" for each day shall be the last reported sales price or, in case no such reported sale took place on such day, the average of the last reported bid and asked prices for such day, in either case on the Nasdaq Stock Market or the principal national securities exchange on which the Common Stock is permitted to trade, or, if the Common Stock is not permitted to trade on the Nasdaq Stock Market or on any national securities exchange, but is traded in the over-the-counter market, the average of the closing bid and asked prices of the Common Stock on the OTC Bulletin Board or any comparable system, or, if the Common Stock is not quoted on the OTC Bulletin Board or a comparable system, the average of the closing bid and asked prices as furnished by two members of the National Association of Securities Dealers, Inc. selected from time to time by the Company for that purpose, or, if two members of the National Association of Securities Dealers, Inc. do not furnish bid and asked prices for that purpose, the price determined in good faith by the Board

of Directors of the Company based on such relevant facts, which may include opinions of independent experts, as may be available to the Board of Directors of the Company.

"Registration Statement" shall have the meaning set forth in Section 3(c).

## **2. Dividends.**

No dividends shall accrue with respect to the shares of this Series; provided however, that in the event the Board of Directors of the Company shall declare a dividend payable upon the outstanding shares of the Common Stock, the holders of the shares of this Series shall be entitled to the amount of dividends per share of this Series as would be declared payable on the largest number of full shares of Common Stock into which each such share of this Series could be converted pursuant to the provisions of Section 3 hereof, such number determined as of the record date for the determination of holders of Common Stock entitled to receive such dividend.

## **3. Conversion Rights.**

(a) Subject to and upon compliance with the provisions of this Section 3, the holder of any shares of this Series may at such holder's option at any time convert any such shares into that number of shares of Common Stock as shall be determined by dividing an amount (the "Conversion Price" as then in effect) into the sum of the Liquidation Preference of the shares so converted plus the amount of any declared but unpaid dividends (as of the date of conversion) on the shares so converted. The initial Conversion Price is \$9.12, subject to adjustments as set forth herein. Upon conversion, the issuance of shares of Common Stock as a result of any declared but unpaid dividends shall satisfy all dividend obligations with respect to the shares so converted.

(b) The holder of any shares of this Series may exercise the conversion right as to any of them by delivering to the Company during regular business hours, at the principal office of the Company, the certificate or certificates for the shares to be converted, duly endorsed or assigned in blank or to the Company (if required by it), as well as written to the Company at that office that such holder elects to convert such shares. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon conversion shall be issued. Conversion shall be deemed to have been effected on the Business Day when such delivery is made (or on the next succeeding Business Day if such delivery is made on a day other than a Business Day), and such date is referred to herein as the "Conversion Date." As promptly as practicable thereafter, the Company shall issue and deliver to or upon the written order of such holder a certificate or certificates for the number of full shares of Common Stock to which any such holder is entitled, and a check or cash in respect of any fractional interest in a share of Common Stock as provided in Section 3(e). The person in whose name the certificate or certificates for Common Stock are to be issued shall be deemed to have become a holder of record of the Common Stock on the Conversion Date, and the applicable Conversion Price shall be that in effect on the Conversion Date. Upon conversion of only a portion of the number of shares of this Series covered by a certificate surrendered for conversion, the Company shall issue and deliver to or upon the written order of the holder of the certificate so surrendered for conversion, at the Company's expense, a new certificate for the shares of this Series representing the unconverted portion of the

certificate so surrendered, which new certificate shall entitle the holder thereof to dividends (if any) on the shares represented thereby to the same extent as if the certificate theretofore covering such unconverted shares had not been surrendered for conversion.

(c) If the Company shall file a registration statement (other than any registration statement on Form S-4, Form S-8, or any successor form or other form not permitting registration of securities offered by selling security holders) (the "Registration Statement") with the United States Securities and Exchange Commission (the "SEC") relating to a Qualified Public Offering of securities of the Company at any time while any of the shares of this Series are outstanding, notice of such filing shall be given by first class mail, postage prepaid, mailed not less than 10 days prior to the date such Registration Statement is filed with the SEC, to each holder of record of the shares at such holder's address as the same appears on the stock register of the Company. Each such notice shall state: (i) the approximate date upon which the Company expects the Registration Statement will be filed with the SEC; and (ii) that, unless sooner converted by the holder pursuant to Section 3(a) above, all of the shares of this Series shall, on the Mandatory Conversion Date (as defined herein), (x) be deemed to have been converted into shares of Common Stock of the Company in accordance with Section 3(d) below, (y) no longer be deemed to be outstanding, and (z) no longer have any voting or other rights (except only the right of the holders thereof to receive shares of Common Stock upon conversion and cash in lieu of fractional interests).

(d) If notice of conversion has been given pursuant to Section 3(c), conversion shall be deemed to have been effected as of the close of business on the Business Day immediately prior to the day on which the closing with respect to the Qualified Public Offering is held (or on the next preceding Business Day if such conversion is made on a day other than a Business Day), and such date is referred to herein as the "Mandatory Conversion Date." On the Mandatory Conversion Date, each holder of any shares of this Series shall be entitled to receive, in accordance with the terms hereof, that number of shares of Common Stock as shall be determined by dividing the Conversion Price as then in effect into the sum of the Liquidation Preference of the shares so converted plus the amount of any declared but unpaid dividends (as of the Mandatory Conversion Date) on the shares so converted. Upon conversion, the issuance of shares of Common Stock as a result of any declared but unpaid dividends shall satisfy all dividend obligations with respect to the shares so converted. As promptly as practicable after the Mandatory Conversion Date, the Company shall issue and deliver to or upon the written order of such holder a certificate or certificates for the number of full shares of Common Stock to which any such holder is entitled, and a check or cash in respect of any fractional interest in a share of Common Stock as provided in Section 3(e). The person in whose name the certificate or certificates for Common Stock are to be issued shall be deemed to have become a holder of record of the Common Stock on the Mandatory Conversion Date, and the applicable Conversion Price shall be that in effect on the Mandatory Conversion Date.

(e) No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of this Series. Instead, the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to the Quoted Price of a share of Common Stock on the Conversion Date multiplied by such fractional interest. Fractional interests shall not be entitled to dividends, and the holders of fractional interests shall not be entitled to any rights as holders of Common Stock in respect thereof.

(f) The Conversion Price shall be subject to adjustment from time to time, calculated to the nearest cent, as follows, except that no adjustments to the Conversion Price shall be made in respect of any declared dividends, and no adjustment need be made until cumulative adjustments would affect the Conversion Price by more than one percent:

(i) *Adjustments for Changes in Capital Stock.* If the Company:

- (A) pays a dividend or makes a distribution on its Common Stock in shares of its Common Stock;
- (B) subdivides its outstanding shares of Common Stock into a greater number of shares;
- (C) combines its outstanding shares of Common Stock into a smaller number of shares;
- (D) makes a distribution on its Common Stock in shares of its capital stock other than Common Stock; or
- (E) issues by reclassification of its Common Stock any shares of its capital stock.

then the conversion privilege and the Conversion Price in effect immediately prior to such action shall be adjusted so that the holder of shares of this Series thereafter converted may receive the number of shares of capital stock of the Company which he would have owned immediately following such action if he had converted such shares immediately prior to such action, subject to further adjustment pursuant to this Section 3.

The adjustment shall become effective immediately after the record date in the case of a dividend or distribution and immediately after the effective date in the case of a subdivision, combination or reclassification.

If after an adjustment, a holder of shares of this Series upon conversion of such shares may receive shares of two or more classes of capital stock of the Company, the adjusted Conversion Price shall be proportionately allocated in good faith by the Board of Directors between the classes of capital stock. After such allocation, the conversion privilege and the Conversion Price of each class of capital stock shall thereafter be subject to adjustment on terms comparable to those applicable to Common Stock in this Section.

(ii) *When No Adjustment Required.*

- (A) No adjustment need be made for a change in the par value of the Common Stock.
- (B) To the extent the shares of this Series become convertible into cash, no adjustment need be made thereafter as to the cash. Interest will not accrue on the cash.

(iii) *Voluntary Reduction.* The Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 days and if the reduction is irrevocable during the period (including any extension thereof), provided, that in no event may the Conversion Price be less than the par value of a share of Common Stock.

Whenever the Conversion Price is reduced, the Company shall mail to holders of shares of this Series a notice of the reduction. The Company shall mail the notice at least 15 days before the date the reduced Conversion Price takes effect. The notice shall state the reduced Conversion Price and the period it will be in effect.

(iv) *Notice of Certain Transactions.* If:

- (A) the Company takes any action that would require an adjustment in the Conversion Price pursuant to clause (i) (other than the payment of dividends on Common Stock in shares of Common Stock);
- (B) the Company takes any action that would require an adjustment in the Conversion Price pursuant to clause (v); or
- (C) there is a liquidation or dissolution of the Company,

the Company shall mail to holders of shares of this Series a notice stating the proposed record date for a dividend or distribution or the proposed effective date of a subdivision, combination, reclassification, consolidation, merger, transfer, lease, liquidation or dissolution. The Company shall mail the notice at least 15 days before such date. Failure to mail the notice or any defect in it shall not affect the validity of the transaction.

(v) *Reorganization of Company.* If the Company is a party to a reclassification (excluding that referred to in clause (i)) or shall consolidate with or merge into any other corporation or transfer all of its properties and assets as an entirety to any person, upon consummation of such transaction each share of this Series shall automatically become convertible into and, notwithstanding any other provisions hereof, only into the kind and amount of securities, cash

or other assets which the holder of such share would have owned immediately after such reclassification, consolidation, merger or transfer if such holder had converted such share immediately before the effective date of such transaction.

If this clause applies, clause (i) does not apply.

(g) Whenever the Conversion Price shall be adjusted as provided in Section 3(f), the Company shall forthwith file, at the office of the transfer agent for shares of this Series or at such other place as may be designated by the Company, a statement, signed by its President, showing in detail the facts requiring such adjustment and the Conversion Price and conversion ratio that shall be in effect after such adjustment. The Company shall also cause a copy of such statement to be sent by mail, first class postage prepaid, to each holder of shares of this Series at his or her address appearing on the Company's records. Where appropriate, such copy may be sent in advance and may be included as part of a notice required to be mailed under the provisions of clause 3(f)(iv).

(h) The Company shall reserve, free from preemptive rights, out of its treasury or authorized but unissued Common Stock, or both, solely for the purpose of effecting the conversion of shares of this Series, sufficient shares of Common Stock to provide for the conversion of all such shares outstanding from time to time. All shares of Common Stock issued upon conversion of shares of this Series shall be fully paid and nonassessable. The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon the conversion, except that the holder of the converted shares shall pay any such tax which is due because the shares of Common Stock are issued in a name other than such holder's name.

#### 4. Voting.

(a) *General Voting Rights.* The shares of the Series shall have voting rights in all ways equal to the voting rights of the Common Stock of the Company, with the holder of each share in this Series being entitled to a number of votes equal to the number of votes each holder would have had if such holder had converted his shares in this Series to Common Stock of the Company pursuant to Section 3 hereof, and the conversion to Common Stock had occurred immediately prior to the record date set for the action upon which a vote is being taken. Accordingly, the holders of the shares of the Series shall be entitled to receive notice of all meetings of the shareholders of the Company and shall be entitled to vote on any and all issues upon which the holders of Common Stock are entitled to vote to the same extent and in the same manner as the holders of the Common Stock of the Company.

(b) *Special Voting Rights.* In addition to the voting rights set forth in Section 4(a) above, the holders of the shares of this Series shall have the following voting rights:

(i) The right to vote in the manner and to the extent required by law.



- (ii) So long as any shares of this Series shall be outstanding, the affirmative vote or written consent of the holders of record of at least 80% of the number of shares of this Series then outstanding shall be required:
- (A) to change any of the provisions of the Company's Articles of Incorporation or this Designation so as to affect materially and adversely any of the rights or preferences of the shares of this Series; or
  - (B) to establish a class of stock or a series of any class of stock of the Company ranking senior to or on a parity with this Series as to dividends or voting rights or upon liquidation; or
  - (C) for the Company to (1) issue or sell any shares of Common Stock (including shares held in the Company's treasury and shares of Common Stock issued upon the exercise of any options, rights or warrants to subscribe for shares of Common Stock and shares of Common Stock issued upon the direct or indirect conversion or exchange of securities for shares of Common Stock), for a consideration per share less than the Conversion Price then in effect immediately prior to the issuance or sale or (2) issue or grant any rights to subscribe for or purchase, or any options, rights or warrants for the purchase of, Common Stock, or any stock or securities convertible into or exchangeable for Common Stock (such convertible or exchangeable securities or stock being herein called ("Convertible Securities")), if the consideration per share for which shares of Common Stock are issuable upon the exercise of such options, rights or warrants or upon conversion or exchange of such Convertible Securities (determined by dividing (x) the total amount, if any, received or receivable by the Company as consideration for the granting of such options, rights or warrants, plus the minimum aggregate amount of consideration, if any, payable to the Company upon exercise of such options, rights or warrants, or plus, in the case of such options, rights or warrants that relate to Convertible Securities, the minimum amount of additional consideration, if any, payable to the Company upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the exercise of such options, rights or warrants or upon conversion or exchange of all such Convertible Securities issuable upon the exercise of such options, rights or warrants) is less than the Conversion Price then in effect immediately prior to the issuance or grant.

For purposes of this Section 4(b)(ii)(C), if a part or all of the consideration received by the Company in connection with the

issuance of the shares of Common Stock or the issuance of any of the other securities described in this Section 4(b)(ii)(C), consists of property other than cash, such property shall be deemed to have the same value as is recorded on the books of the Company with respect to the receipt of such property. This Section 4(b)(ii)(C) shall not apply under any of the circumstances in which Section 3(f) is applicable.

(c) For the purpose of this Section 4 an amendment to the Company's Amended and Restated Articles of Incorporation increasing or decreasing the aggregate number of authorized shares of Common Stock, as a class, or Preferred Stock, as a class, or the authorization or designation of, or increase in the authorized amount of, any class or series of stock ranking junior as to dividends or upon liquidation with the shares of this Series, shall not be deemed to affect materially and adversely any of the powers, preferences or rights of the shares of this Series or of all Preferred Stock as a class.

(d) Shares of this Series held by the Company directly or through entities of which a majority of the voting securities are held by the Company shall not be deemed to be outstanding for purposes of any voting rights granted in this Section 4.

## **5. Liquidation Rights.**

(a) Upon the dissolution, liquidation or winding up of the Company, the holders of record of the shares of this Series shall be entitled to receive out of the assets of the Company available for distribution to shareholders, before any payment or distribution shall be made on the Common Stock or on any other class or series of stock of the Company ranking junior to this Series upon liquidation, an amount equal to the Liquidation Preference together with a sum equal to all declared but unpaid dividends on such shares declared thereon to the date of final distribution. Written notice of such dissolution, liquidation or winding up, stating a payment date, the amount of such payment and the place where payment will be made shall be given by certified mail, postage prepaid, not less than 30 nor more than 60 days prior to the payment date stated therein to the holders of record of this Series, such notice to be addressed to each holder at his address as the same appears on the stock register of the Company.

(b) Neither the sale, lease or other transfer of all or substantially all the property or business of the Company, nor the merger or consolidation of the Company into or with any other corporation or other business entity nor the merger or consolidation of any other corporation or other business entity into or with the Company, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this Section 5.

(c) After the payment to the holders of the shares of this Series of the full preferential amounts provided for in this Section 5, the holders of shares of this Series, as such holders, shall have no right or claim to any of the remaining assets of the Company.

(d) In the event the assets of the Company available for distribution to the holders of shares of this Series, and to the holders of any other class or series of stock of the Company ranking on a parity with the shares of this Series upon liquidation, upon any dissolution, liquidation or winding up of the Company, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to Section 5(a) and the terms of such other stock, no such distribution shall be made on account of any shares of any other series of Preferred Stock, or of any other class, ranking on a parity with the shares of this Series upon such dissolution, liquidation or winding up unless proportionate distributive amounts shall be paid on account of the shares of this Series, ratably in accordance with the sums which would be payable in such distribution if all sums payable in respect of the shares of all such series of Preferred Stock and any such other class as aforesaid were discharged in full.

## **6. Ranking.**

For purposes of this Designation, any stock of any class or classes or of any series of the Company shall be deemed to rank:

(a) senior to the shares of this Series, either as to dividends or upon liquidation, if the holders of such stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Company, as the case may be, in preference or priority to the holders of shares of this Series;

(b) on a parity with shares of this Series, either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share or sinking fund provisions, if any, be different from those of this Series, if the holders of such stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Company, as the case may be, in proportion to their respective dividend rates or liquidation preferences, without preference or priority, one over the other, as between the holders of such stock and the holders of shares of this Series; and

(c) junior to shares of this Series, either as to dividends or upon liquidation, if such class shall be Common Stock or if the holders of shares of this Series shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Company, as the case may be, in preference or priority to the holders of such stock.

## **7. Transfer and Reissuance.**

(a) All or any shares of this Series acquired by the Company and not retired may be transferred by the Company to any other person(s). However, for so long as such shares are held by the Company, and until such shares are transferred to another person, no dividends shall be payable if declared with respect to such shares.

(b) The number of shares of this Series available for issuance under this Designation at any time shall be the difference between the authorized number of shares designated in Section 1 and

the number issued at such time, and no reduction shall be made for any shares of this Series acquired by the Company and subsequently retired or converted into Common Stock under Section 3.

**8. Sinking Fund.**

There shall be no sinking fund for the payment of dividends (if declared) or liquidation preference on the shares of this Series.

**9. Amendment.**

This Designation constitutes an agreement between the Company and the holders of the shares of the Series and may be amended by vote of the Board of Directors of the Company and the holders of record of at least 80% of the number of shares of this Series then outstanding.