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BASIC AMENDMENT

GOLD COAST RESTAURANTS, INC.

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Certificate of Status	0
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Amendment

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**SECOND ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
GOLD COAST RESTAURANTS, INC.**

WHEREAS, the proposed amendment to the Articles of Incorporation of Gold Coast Restaurants, Inc., hereinafter set forth was approved by the consent of the directors and shareholders of the Corporation pursuant to the provisions of Florida Statutes, Section 607.0821 and Section 607.0704, by Action by Written Consent of the Directors and Shareholders dated as of February 28, 2000.

FIRST: The Corporation name is:

Gold Coast Restaurants, Inc.

SECOND: The Corporation adopts the following as new Article IV (Capital Stock) of its Articles of Incorporation:

ARTICLE IV

Capital Stock

A. Generally

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The authorized capital stock which the Corporation may issue shall be as follows:

<u>Class of Stock</u>	<u>Number of Authorized Shares</u>	<u>Par Value</u>
Common Stock	1,000,000	\$.001
Series A Preferred Stock	51,340	\$.001
Series B	92,250	\$.001

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Preferred Stock

B. Series A Preferred Stock and Series B Preferred Stock

1. **Dividends.** (a) The holders of record of shares of Series A Preferred Stock shall be entitled to receive dividends (the "Series A Dividends") at a rate of eight percent (8%) per annum on the Liquidation Price for the Series A Preferred Stock (as defined in Section 2(d) below). The holders of record of shares of Series B Preferred Stock shall be entitled to receive dividends (the "Series B Dividends") at a rate of eight percent (8%) per annum on the Liquidation Price for the Series B Preferred Stock (as defined in Section 2(d) below). The Series A Dividends and Series B Dividends will be fully cumulative and prior and in preference to any declaration or payment of any dividend or other distribution on the Junior Securities (as defined in Section 2(a) below).

(i) On October 1, 2004, or on a Conversion Date (as to accrued Series A Dividends on the converted shares of Series A Preferred Stock only), all accrued unpaid Series A Dividends shall be payable in one (1) lump sum payment to the holders of record of the Series A Preferred Stock (each, a "Series A Record Holder" or more than one, "Series A Record Holders") as they appear on the stock books of the Corporation on that date. From and after October 1, 2004, all accrued Series A Dividends shall be payable to the Series A Record Holders quarterly, in arrears, on the first day of such quarter (the "Quarterly Dividend Date"), commencing on January 1, 2005, except that if any such date is a Saturday, Sunday or legal holiday, then such dividend shall be payable on the next day that is not a Saturday, Sunday or legal holiday on which banks in the State of Florida are permitted to be closed.

(ii) On October 1, 2004, or on a Conversion Date (as to accrued Series B Dividends on the converted shares of Series B Preferred Stock only), all accrued unpaid Series B Dividends shall be payable in one (1) lump sum payment to the holders of record of the Series B Preferred Stock (each, a "Series B Record Holder" or more than one, "Series B Record Holders"; Series A Record Holders and Series B Record Holders are each, a "Record Holder" or more than one, "Record Holders") as they appear on the stock books of the Corporation on that date. From and after October 1, 2004, all accrued Series B Dividends shall be payable to the Series B Record Holders, quarterly, in arrears, on the first Quarterly Dividend Date of such quarter, commencing on January 1, 2005, except that if any such date is a Saturday, Sunday or legal holiday, then such dividend shall

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be payable on the next day that is not a Saturday, Sunday or legal holiday on which banks in the State of Florida are permitted to be closed.

The Series A Dividends and Series B Dividends shall automatically accrue in the absence of an election by the Board of Directors within ten (10) days after each applicable Quarterly Dividend Date to pay the Series A Dividends and Series B Dividends.

(b) The amount of dividends payable for any period that is shorter or longer than a full annual dividend shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable. If the Corporation cannot fully pay a Series A Dividend or Series B Dividend that is then due and payable, the Corporation shall pay the unpaid dividends to the maximum possible extent and make any partial payments to the holders of the Series A Preferred Stock and Series B Preferred Stock ratably based on the respective amount of Series A Dividends and Series B Dividends otherwise payable to them. For any time period during which payment of a Series A Dividend or Series B Dividend, as the case may be, is due and unpaid, and until such dividend is paid, the applicable rate for the due but unpaid dividends will increase from eight percent (8%) per annum to eighteen percent (18%) per annum.

(c) In the event of a Public Offering (as defined in Section 4(b)), each Record Holder may elect to receive the payment of all Series A Dividends or Series B Dividends, as applicable, accrued through the date of the Public Offering in registered shares of Common Stock (each, a "Payment-in-Kind" or more than one, "Payments-in-Kind") rather than cash. Any such Payment-in-Kind shall be payable as of the date of the Public Offering to the Record Holder electing to receive such Payments-in-Kind. Each Payment-in-Kind shall be that number of shares of Common Stock that is equal in number to the aggregate Series A Dividends or Series B Dividends, as applicable, payable on the date of the Public Offering (including accrued interest compounded on a quarterly basis as indicated above), divided by the per share offering price to the public in the Public Offering, and shall be allocated on a pro rata basis to each Record Holder entitled to receive such dividend. Certificates representing the shares of the Common Stock issuable on payment of any Payment-in-Kind shall be delivered to each Record Holder entitled to receive the Payment-in-Kind (in appropriate denominations) on or before the thirtieth (30th) day following the date of the Public Offering.

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(d) The Corporation shall not pay any dividends with respect to the Common Stock while any shares of Series A Preferred Stock or Series B Preferred Stock remain outstanding.

2. **Ranking; Preference on Liquidation.** (a) The Series A Preferred Stock and Series B Preferred Stock shall rank senior to every other class or series of the Corporation's preferred stock hereafter created and all of its Common Stock (collectively, the "Junior Securities").

(b) If the Corporation liquidates, dissolves, or winds up its affairs (voluntarily or involuntarily) (a "Liquidation Event"), after paying or providing for payment of its debts and other liabilities, the Corporation shall pay to the holders of Series A Preferred Stock and Series B Preferred Stock, before paying any amount to the holders of Junior Securities, a cash amount for each share of Series A Preferred Stock and Series B Preferred Stock, as applicable, equal to the Liquidation Price, as defined below. If its assets to be distributed among the holders of Series A Preferred Stock and Series B Preferred Stock on a Liquidation Event are insufficient to permit the Corporation to pay the full Liquidation Price for each share of Series A Preferred Stock and Series B Preferred Stock, the Corporation shall distribute its assets among the holders of Series A Preferred Stock and Series B Preferred Stock ratably based on the respective amounts otherwise payable to them. If the Corporation has paid the full Liquidation Price for each share of Series A Preferred Stock and Series B Preferred Stock to the holders of Series A Preferred Stock and Series B Preferred Stock, as applicable, or if the Corporation shall have set aside funds sufficient for such payments in trust for the account of such holders so as to be available for such payment, all remaining assets available for distribution (after payment or provision for payment of all debts and liabilities of the Corporation) shall be distributed to the respective holders of any stock ranking junior to the Series A Preferred Stock and Series B Preferred Stock but senior to the Common Stock ratably in proportion to the number of shares of such stock they then hold, if any such stock is then outstanding, and thereafter to the respective holders of the Common Stock ratably in proportion to the number of shares of Common Stock they then hold.

(c) The following will, at the option of the holders of Series A Preferred Stock and Series B Preferred Stock, be deemed to be a Liquidation Event and trigger the Corporation's obligation to pay the Liquidation Price applicable to the series of Preferred Stock: (i) a merger or consolidation of the Corporation with or into one or more corporations or other entities that results in the exchange of 50% or more of the outstanding shares of any class of capital stock of the Corporation outstanding immediately before the merger or consolidation for securities or other

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consideration issued or paid by the other corporation; (ii) the sale or transfer of all or substantially all of the assets of the Corporation; or (iii) the resale by shareholders, in any three-year period, of Common Stock cumulatively constituting 50% or more of the shares of Common Stock outstanding when the applicable series of preferred stock was initially issued. Each series of Preferred Stock may exercise the foregoing option independently, by the vote or consent of holders of a majority of the outstanding shares of that series of Preferred Stock. The Corporation will notify the holders of Series A Preferred Stock and Series B Preferred Stock in writing (the "Liquidation Event Notice") within sixty (60) days after the occurrence of a Liquidation Event. The option of the holders of Series A Preferred Stock and Series B Preferred Stock to have the foregoing events treated as Liquidation Events may be exercised by written notice given to the Corporation by holders of a majority of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock within sixty (60) days of the notifying holders' receipt of the Liquidation Event Notice.

(d) The "Liquidation Price" for Series A Preferred Stock for a Liquidation Event will be the amount of \$48.695 per share, plus accrued and unpaid Series A Dividends. The "Liquidation Price" for Series B Preferred Stock for a Liquidation Event will be the amount of \$111.111 per share, plus accrued and unpaid Series B Dividends. The Corporation shall pay the applicable Liquidation Price to the holders of Series A Preferred Stock and Series B Preferred Stock within 15 days of the Company's receipt of notice from those holders of their option to have an event treated as a Liquidation Event under Section 2(c). The Corporation shall pay to each holder of Series A Preferred Stock and Series B Preferred Stock interest at an annual rate of 18% on any part of the Liquidation Price not paid when due. In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of any series of Series A Preferred Stock or Series B Preferred Stock into a greater number of shares, the Liquidation Price for such series in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of any series of Series A Preferred Stock or Series B Preferred Stock shall be combined into a smaller number of shares, the Liquidation Price for such series in effect immediately prior to such combination shall be proportionately increased.

3. **Redemption.** (a) Subject to the terms and conditions of this section, any Record Holder may require the Corporation to redeem its shares of Series A Preferred Stock or Series B Preferred Stock, as the case may be, with cash at the redemption price per share determined pursuant

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to paragraph (d) of this Section 3 (the "Share Price"), plus any dividends (whether or not declared or due) accrued and unpaid on the redeemed shares to the redemption date (the "Redemption Price").

(b) (i) On December 31, 2006, each Record Holder may require the Corporation to redeem up to one-third of the shares of such stock that it held as of July 1, 2006; on December 31, 2007, each Record Holder may require the Corporation to redeem another one-third of the shares of such stock that it held as of July 1, 2006, less the number of shares, if any, previously redeemed, or if the holder did not exercise its redemption right on the December 31, 2006 Redemption Date, the holder may require the Corporation to redeem up to two-thirds of the shares of such stock it held as of July 1, 2006; and on December 31, 2008, and at any time thereafter, each Record Holder may require the Corporation to redeem all remaining shares of such stock that it still holds. During the period between May 1 and June 1 preceding each such December 31, the Corporation shall notify each Record Holder of the availability of this redemption option.

(ii) As appropriate with respect to a redemption pursuant to this Section 3, December 31, 2006, 2007, and 2008 (or the later effective date after December 31, 2008, of Investor's exercise of its redemption right) each constitutes a Redemption Date.

(c) Each Record Holder electing to require the Corporation to redeem its shares pursuant to this section shall notify the Corporation of its election by means of certified mail, return receipt requested, addressed to the Corporation and mailed at least six months before the Redemption Date. The notice must specify (i) the Redemption Date; (ii) unless all shares eligible for redemption are to be redeemed, the number of shares of Series A Preferred Stock and Series B Preferred Stock, as applicable, to be redeemed; (iii) the applicable Redemption Price; and (iv) the place for the holder's receipt of payment and for its delivery to the Corporation of stock certificate(s) and transfer instrument(s). Any notice given in this manner will be effective when sent, whether or not actually received by the Corporation. A Record Holder may cancel its notice with respect to a redemption (and nullify the related redemption) by notifying the Corporation by these means at least thirty days before the Redemption Date.

(d) The Share Price for a redemption of the Series A Preferred Stock or Series B Preferred Stock (collectively, the "Preferred Stock") will be the highest of the following: (i) the fair market value of the redeemed Preferred Stock on the Redemption Date, (ii) the Book Value (as defined below) of the redeemed Preferred Stock on the Redemption Date, or (iii) the Liquidation Price. The Board of Directors in good faith will establish the fair market value of such shares, and

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the Corporation shall notify each holder of Preferred Stock in writing of the value. If, however, the holders of at least two-thirds of the shares held by the holders of a series of Preferred Stock notify the Corporation before the Redemption Date that they disagree with the value placed upon their series of Preferred Stock, then the holders of that series and the Corporation shall attempt to agree upon a fair market value. Should the holders of the series and the Corporation be unable to agree during the twenty (20)-day period immediately following the giving of the written notice of such disagreement as to the fair market value without employing of appraisers, they shall each select an appraiser experienced in the business of evaluating or appraising the market value of stock. The two (2) appraisers so selected (the "Initial Appraisers") shall, on or prior to the scheduled redemption, appraise such shares to be redeemed as of the date of the scheduled redemption. The appraisers shall not discount the shares of Preferred Stock for minority ownership interest or illiquidity. If the difference between the resulting appraisals is not greater than ten percent (10%), then the average of the appraisals will be deemed the fair market value; otherwise, the Initial Appraisers shall select an additional appraiser (the "Additional Appraiser"), who shall be experienced in a manner similar to the Initial Appraisers. If they fail to select the Additional Appraiser as provided above, either the holders of Preferred Stock or the Corporation may apply, after written notice to the other, to any judge of any court of general jurisdiction for the appointment of such Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of the Preferred Stock, and this value will be the Appraised Value. The Additional Appraiser shall notify the Corporation and the holders of Preferred Stock of his determination. Each party shall pay the expenses and fees of the appraiser selected by him or it (ratably based on share ownership for the holders of Preferred Stock), and, if an Additional Appraiser is employed, the party who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

For purposes of this Agreement, the term "Book Value" means, as to any particular shares of stock, the aggregate book value per share of those shares as shown on the Corporation's books of account on the Redemption Date, as determined by the Corporation's independent certified public accountants.

(e) The Corporation shall pay the applicable Redemption Price to each holder of redeemed Series A Preferred Stock or Series B Preferred Stock when the holder delivers to the place

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specified in its notice (i) the certificate(s) evidencing the redeemed Series A Preferred Stock or Series B Preferred Stock, as applicable, and (ii) transfer instrument(s) sufficient to transfer to the Corporation the redeemed Series A Preferred Stock or Series B Preferred Stock, free of any adverse interest. If a holder redeems less than all of the shares evidenced by a certificate, the Corporation shall at its expense issue and deliver to the holder a new certificate evidencing the unredeemed shares.

(f) Provided that the Corporation deposits in a separate bank account, in trust solely for the express purpose of paying the Redemption Price, sufficient funds to pay the aggregate Redemption Price payable for all redeemed shares and those funds are disbursed in payment of the Redemption Price on the Redemption Date, (i) no interest will accrue on the Redemption Price after the Redemption Date, (ii) the redeemed shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, will cease to be outstanding at the close of business on the Redemption Date (whether or not the holder surrenders its certificate), and (iii) the holders of the redeemed shares will cease to have any further rights with respect to those shares, except to receive payment of the Redemption Price. The Corporation shall pay to each holder of redeemed Series A Preferred Stock or Series B Preferred Stock interest at an annual rate of 18% on any amount of the Redemption Price not paid when due. If the assets of the Corporation are not sufficient to pay in full the Redemption Price to the holders of all shares electing redemption, then the holders of shares electing redemption shall share ratably in the distribution of assets available in accordance with the amount that would be payable if the amounts to which the holders of shares electing redemption are entitled were paid in full.

(g) No share of Series A Preferred Stock or Series B Preferred Stock with respect to which a Conversion Date (as defined below) has occurred may be redeemed.

(h) At the Corporation's request, each holder of Series A Preferred Stock or Series B Preferred Stock will subordinate its redemption rights under this Section to the claims of a senior debt lender that furnishes loans to the Corporation on terms that holders of a majority in interest of the Series A Preferred Stock and Series B Preferred Stock have approved.

4. **Conversion.** Each share of Series A Preferred Stock and Series B Preferred Stock shall be convertible into Common Stock as follows:

(a) **Conversion Option.** Subject to the terms and conditions of this Section 4, any Record Holder may, at its option, at any time and from time to time (except on or following the

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effective date of any Liquidation Event or the redemption of the shares proposed to be converted), convert any or all of its shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, into the number of fully paid and nonassessable shares of Common Stock determined pursuant to Section 4(c). The holders of Series A Preferred Stock or Series B Preferred Stock may exercise this conversion option at any time following their receipt of notice of a Liquidation Event.

(b) **Mandatory Conversion.** All shares of Series A Preferred Stock and Series B Preferred Stock then outstanding will automatically be converted into the number of fully paid and nonassessable shares of Common Stock set forth in this Section 4(c) as of the date that the Securities and Exchange Commission declares effective a registration of the Common Stock under the Securities Act of 1933, as amended, and the Corporation completes a bona fide offering of its Common Stock to the general public (a "Public Offering") (i) that is underwritten on a firm commitment basis by one or more nationally recognized underwriters (ii) from which the Corporation receives net cash proceeds of at least \$20,000,000, and (iii) that provides for an initial offering price to the public per share of Common Stock of at least three (3) times the Conversion Price (as defined below) in effect on the effective date for the Series A Preferred Stock and at least three (3) times the Conversion Price in effect on the effective date for the Series B Preferred Stock (appropriately adjusted for stock splits, stock dividends, share combinations, and the like with respect to the Common Stock).

(c) **Conversion Price.** (i) Each share of Series A Preferred Stock shall be convertible into such number of shares of Common Stock as is determined by dividing \$48.695 by the Conversion Price in effect on the Conversion Date (as defined below). Each share of Series B Preferred Stock shall be convertible into such number of shares of Common Stock as is determined by dividing \$111.111 by the Conversion Price in effect on the Conversion Date (as defined below). The "Conversion Price" at which shares of Common Stock will be issuable on conversion of shares of the (1) Series A Preferred Stock initially will be \$48.695 and, thus, initially each such share of Series A Preferred Stock is convertible into one share of Common Stock, and (2) Series B Preferred Stock initially will be \$111.111 and, thus, initially each such share of Series B Preferred Stock is convertible into one share of Common Stock. Based on the initial Conversion Prices for Series A Preferred Stock and Series B Preferred Stock, respectively, all of the 51,340 outstanding shares of Series A Preferred Stock are initially convertible into 51,340 shares of Common Stock, and all of the 85,500 outstanding shares of Series B Preferred Stock are initially convertible into 85,500 shares of

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Common Stock. The Conversion Price for both the Series A Preferred Stock and Series B Preferred Stock will be subject to adjustment as set forth in Section 4(f). If the holder converts more than one share of Series A Preferred Stock or Series B Preferred Stock, the number of shares of Common Stock issuable on conversion will be computed on the basis of the aggregate number of shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, so converted.

(ii) The initial Conversion Price for the Series B Preferred Stock will be increased to \$133.333 (with no further adjustments pursuant to Section 4(f) below) as of the date of the Corporation's sale or completion of a Public Offering, if the holders of the Series B Preferred Stock will, based on the Conversion Price (as adjusted pursuant to Section 4(f) below), realize an internal annual rate of return of at least 40% on their investment in the Series B Preferred Stock. If the foregoing increase in the initial Conversion Price for the Series B Preferred Stock would cause the Series B Preferred Stock holders' rate of return to decline below 40%, the Conversion Price will adjust in an amount sufficient to cause the holders' annual rate of return on their investment to be 40%. The holders' annual internal rate of return will be determined based on their implied return from the issuance date of the Series B Preferred Stock through the sale or Public Offering, based on the initial offering price per share of Common Stock to the public, if the Corporation has completed a Public Offering, or the fair market value of the consideration realized by the holders, in the event of a sale. For purposes of this section, the fair market value of any non-cash consideration received by the Corporation on a sale will be determined by the procedure described in Section 3(d) above.

(d) **Mechanics of Conversion.** A holder may exercise the conversion right specified in Section 4(a) as to all or any part of its Series A Preferred Stock or Series B Preferred Stock, as applicable, by surrendering to the Corporation (or to another person designated by the Board of Directors) the certificates evidencing the shares it elects to convert, endorsed and assigned to the Corporation in blank, and accompanied by written notice confirming the holder's exercise of its conversion option as to all or a specified portion of the shares evidenced by the certificates. Each holder of outstanding Series A Preferred Stock or Series B Preferred Stock shall promptly surrender its stock certificates to the Corporation on a mandatory conversion pursuant to Section 4(b). Conversion of shares of Series A Preferred Stock or Series B Preferred Stock to Common Stock will be effective when the holder delivers to the Corporation notice of its election to convert and certificates evidencing the converted shares (for a conversion pursuant to Section 4(a)) or on the date of the Public Offering (for a conversion pursuant to Section 4(b)) (the foregoing respective dates are

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the "Conversion Date".) As promptly as practicable after the Conversion Date and in any event within five days after surrender of the certificate or certificates representing converted shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, the Corporation shall issue and deliver at its expense to a converting holder (or to another person designated in writing by the holder), a certificate evidencing the number of whole shares of Common Stock to which such holder is entitled. The person in whose name the certificate or certificates for Common Stock are to be issued will be deemed the holder of such Common Stock as of the close of business on the Conversion Date. On conversion of only a portion of the number of shares evidenced by a certificate surrendered for conversion, the Corporation shall issue and deliver at its expense to the converting holder (or to another person designated in writing by the holder, consistently with the provisions of the Amended and Restated Shareholder Agreement of the Corporation) a new certificate for the number of shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, evidencing the unconverted portion of the surrendered certificate. At the close of business on the Conversion Date, (i) the converted shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, will cease to be outstanding, (ii) the holders of the converted shares will cease to have any further rights with respect to those shares, except to receive Common Stock and cash (as specified below) with respect to the converted shares, and (iii) the holders of the converted shares will be deemed to have become the record holder of the Common Stock for all purposes.

(c) **Fractional Shares.** The record holders and subsequent holders of Series A Preferred Stock and Series B Preferred Stock, by the acceptance thereof, expressly waive their right to receive fractional shares of Common Stock, Series A Preferred Stock, or Series B Preferred Stock on conversion of shares of Series A Preferred Stock or Series B Preferred Stock, as applicable. If any fraction of a share would be issuable on the conversion of Series A Preferred Stock and Series B Preferred Stock (or any specified portion thereof), the Corporation shall pay to the holder in lieu thereof an amount in cash equal to the product of such resulting fraction and the applicable Conversion Price.

(f) **Adjustments of Conversion Price Upon Issuance of Common Stock.** If the Corporation issues or sells (or pursuant to subparagraphs (f)(1) through (f)(8), is deemed to issue or sell) any shares of Common Stock for consideration per share less than the Conversion Price in effect immediately before the issuance or sale, the Conversion Price for Series A Preferred Stock or Series B Preferred Stock, as applicable, will be reduced to the price determined by dividing (i) an

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amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately before such issuance or sale (including as outstanding all shares of Common Stock issuable on conversion of outstanding Series A Preferred Stock and Series B Preferred Stock and on exercise of outstanding options) multiplied by the then existing applicable Conversion Price and (b) the consideration, if any, received by the Corporation upon such issuance or sale, by (ii) the total number of shares of Common Stock outstanding immediately after such issuance or sale (including as outstanding all shares of Common Stock issuable on conversion of outstanding Series A Preferred Stock and Series B Preferred Stock, based on the conversion ratio in effect immediately before the issuance, and on exercise of outstanding options).

For purposes of this paragraph (f), the following subparagraphs (f)(1) to (f)(8) also apply to conversion of the Series A Preferred Stock and Series B Preferred Stock to Common Stock:

(f)(1) Issuance of Rights or Options. In case the Corporation in any manner issues (whether directly or by assumption in a merger or otherwise) warrants or other rights to subscribe for or purchase, or options to purchase, Common Stock or stock or securities convertible into or exchangeable for Common Stock (the warrants, rights or options are "Options" and the convertible or exchangeable stock or securities are "Convertible Securities"), whether or not the Options or Convertible Securities are immediately exercisable, and the price per share (determined, for a formula price, based on current circumstances or, if dependent on future circumstances, facts that would result in the lowest price per share) for which Common Stock is issuable on the Options' exercise or on the conversion or exchange of the Convertible Securities (determined by dividing (i) the total amount, if any, payable to the Corporation as consideration for the Option grant, plus the aggregate amount of additional consideration payable to the Corporation on the Option exercise, plus, in the case of any Options that relate to Convertible Securities, any consideration payable on the issue or sale of the Convertible Securities and on their conversion or exchange, by (ii) the total number of shares of Common Stock issuable upon the Options' exercise or on the conversion or exchange of Convertible Securities issuable on the Options' exercise) is less than the applicable Conversion Price in effect immediately before the Option grant, the total number of shares of Common Stock issuable on the Options' exercise or on conversion or exchange of any Convertible Securities issuable on the Options' exercise will be deemed issued for such price per share on the date of the Options'

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grant and thereafter will be deemed outstanding. Except as otherwise provided in subparagraph (f)(3), the applicable Conversion Price will not be further adjusted when the Common Stock is actually issued on exercise of the Options or conversion or exchange of Convertible Securities.

(f)(2) Issuance of Convertible Securities. In case the Corporation in any manner issues (whether directly or by assumption in a merger or otherwise) or sells Convertible Securities, whether or not the rights to exchange or convert the Convertible Securities are immediately exercisable, and the price per share (determined, in the case of a formula price, on the basis of current circumstances or, if dependent on future circumstances, the facts would result in the lowest price per share) for which Common Stock is issuable upon the conversion or exchange (determined by dividing (i) the total amount payable to the Corporation as consideration for the issue or sale of the Convertible Securities, plus the aggregate amount of additional consideration, if any, payable to the Corporation on their conversion or exchange, by (ii) the total number of shares of Common Stock issuable on conversion or exchange of all such Convertible Securities) is less than the applicable Conversion Price in effect immediately before the issue or sale, then the total number of shares of Common Stock issuable upon conversion or exchange of the Convertible Securities will be deemed to be issued for such price per share as of the date of the issue or sale of the Convertible Securities and thereafter will be deemed outstanding, provided that (a) except as provided in subparagraph (f)(3), no further adjustment of the applicable Conversion Price will be made otherwise when the Common Stock is actually issued on conversion or exchange of the Convertible Securities and (b) the applicable Conversion Price will not be further adjusted pursuant to this subsection for the issue or sale of Convertible Securities on the exercise of Options to purchase the Convertible Securities if the applicable Conversion Price has been or will be adjusted for the transaction pursuant to other provisions of this paragraph (f).

(f)(3) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referenced in subparagraph (f)(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph (f)(1) or (f)(2), or the rate at which Convertible Securities referred to in subparagraph (f)(1) or (f)(2) are convertible

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into or exchangeable for Common Stock changes at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Price in effect at the time of such event will be readjusted to the applicable Conversion Price which would have been effective at that time had the Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, when initially granted, issued or sold; and on the expiration of the Options or the termination of a right to convert or exchange any Convertible Securities, the applicable Conversion Price then in effect will be increased to the Conversion Price that would have been in effect at the time of the expiration or termination had the Options or Convertible Securities never been issued.

(f)(4) Stock Dividends and Subdivisions. In case the Corporation declares a dividend or makes any other distribution on stock of the Corporation payable in Common Stock (except for dividends or distributions payable in shares of Common Stock upon the Series A Preferred Stock and Series B Preferred Stock), Options, or Convertible Securities, the Common Stock, Options, or Convertible Securities, as the case may be, issuable in payment of the dividend or distribution will be deemed to have been issued or sold (as of the record date) without consideration (except for the consideration payable to exercise any Options or convert any Convertible Securities). In case the Corporation subdivides its outstanding shares of Common Stock into a greater number of shares, the Conversion Price then in effect will be proportionately reduced to reflect the subdivision. In case the Corporation combines its outstanding shares of Common Stock into a fewer number of shares, the applicable Conversion Price then in effect will be proportionately increased to reflect the combination. An adjustment made pursuant to this paragraph (f)(4) shall become effective retroactively (x) in the case of any such dividend or distribution, to a date immediately following the close of business on the record date for determination of the holders of Common Stock entitled to receive such dividend or distribution, or (y) in the case of any such subdivision or combination, to the close of business on the day upon which such corporate action becomes effective.

(f)(5) Consideration for Stock. In case any shares of Common Stock, Options, or Convertible Securities are issued or sold for cash, the consideration deemed to be received will be the amount actually received by the Corporation, without deduction of any expenses

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incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection with the issuance or sale. In case any shares of Common Stock, Options, or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation will be the fair value of such consideration as determined in good faith by the Corporation's Board of Directors, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection with the issuance or sale.

(f)(6) Record Date. If the Corporation sets a record date to determine the holders of its Common Stock entitled (i) to receive a dividend or other distribution payable in Common Stock, Options, or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options, or Convertible Securities, the record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of a dividend or the making of another distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(f)(7) Treasury Shares. The number of shares of Common Stock outstanding at any given time does not include shares owned or held by or for the account of the Corporation, and its disposition of these shares will be considered an issue or sale of Common Stock for purposes of this subparagraph (f)(7).

(f)(8) Reports as to Adjustments. Whenever the Conversion Price is adjusted as provided in this subsection, the Corporation shall (i) promptly compute the adjustment and furnish to each holder of shares of the Series A Preferred Stock or Series B Preferred Stock, as applicable, a certificate, signed by a principal financial officer of the Corporation, setting forth the new Conversion Price and the number of shares of Common Stock into which each share of Series A Preferred Stock and Series B Preferred Stock is convertible as a result of the adjustment, a brief statement of the facts requiring the adjustment, the computation of the adjustment, and when the adjustment will become effective.

(g) Certain Issues of Common Stock Excepted. Notwithstanding the foregoing provisions, the Corporation will not be required to adjust the Conversion Price in the case of the issuance of, in the case of the Common Stock, up to the aggregate of 18,000 additional shares of Common Stock, that have been issued or are available for issuance pursuant to options or restricted stock grants, to the Corporation's officers, directors, employees, agents, or lenders for their service to

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the Corporation (appropriately adjusted to reflect the occurrence of an event described in paragraph (f)).

(h) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall reserve out of its authorized but unissued Common Stock, solely for the purposes of effecting the conversion of the Series A Preferred Stock and Series B Preferred Stock, the number of shares of Common Stock issuable on conversion of all outstanding Series A Preferred Stock and Series B Preferred Stock. The holders of Common Stock do not have any preemptive right to purchase these reserved shares.

(i) **Payment of Taxes.** The Corporation shall pay any and all taxes, documentary or otherwise, that are payable with respect to the issuance or delivery of Common Stock on conversion of the Series A Preferred Stock and Series B Preferred Stock. The Corporation shall not, however, be required to pay tax with respect to a transfer involved in the issue or transfer and delivery of shares of Common Stock in a name other than the record name of the converted Series A Preferred Stock or Series B Preferred Stock, and no issuance or delivery shall be made unless and until the person requesting such issue pays to the Corporation the amount of any such tax or establishes to the Corporation's satisfaction payment of the tax or that no tax is due. In no event need the Corporation pay or reimburse a registered holder for any income tax or ad valorem tax payable by the holder because of the issuance of Common Stock on conversion of Series A Preferred Stock or Series B Preferred Stock.

(j) **No Reissuance of Series A Preferred Stock and Series B Preferred Stock.** Shares of Series A Preferred Stock and Series B Preferred Stock converted pursuant to this Section 4 will be canceled by the Corporation.

(k) **No Conversion of Series A Preferred Stock and Series B Preferred Stock Being Redeemed.** Notwithstanding this Section 4, no share of Series A Preferred Stock or Series B Preferred Stock for which the holder has given a redemption notice pursuant to Section 3 may be converted into Common Stock, unless the holder effectively withdraws the redemption notice and nullifies the redemption.

(l) **Adjustments for Merger, Consolidation, etc.** In the case of any classification, reclassification, or other reorganization of the Corporation's capital stock, or in the case of the merger or consolidation of the Corporation with or into another corporation, or the conveyance to another corporation of all or any major portion of the Corporation's assets, then, as part of the

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classification, reclassification, merger, consolidation, or conveyance, adequate provision shall be made for each holder of Series A Preferred Stock and Series B Preferred Stock, on exercise of its conversion privilege, to receive on the same basis and conditions set forth in this Section 4 with respect to the Common Stock, the stock, securities, or other property that the holder would have been entitled to receive on such classification, reclassification, merger, consolidation, or conveyance, if the holder had exercised the conversion privilege immediately before the classification, reclassification, merger, consolidation, or conveyance, and in any such case appropriate provision will be made with respect to the rights and interests of the holder to the end that the provisions of this Section 4 (including without limitation, provision for adjustment of the applicable Conversion Price) will be applicable to the shares of stock, securities, or other property deliverable on the exercise of the conversion privilege; and, as a condition of any consolidation, merger, or conveyance, any corporation that succeeds to the Corporation by reason of the merger, consolidation or conveyance shall assume the obligation to deliver, on exercise of the conversion privilege, the shares of stock, securities or other considerations that the holders of the Series A Preferred Stock and Series B Preferred Stock are entitled to receive pursuant to this Section 4.

5. **Voting.** In addition to its voting rights specially provided for in these articles or granted by applicable law, each Record Holder will be entitled to voting rights with respect to all matters on which holders of Common Stock have the right to vote. Each Record Holder may vote that number of votes equal to the number of whole shares of Common Stock into which the holder's shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, would be convertible pursuant to the provisions of Section 4 as of the record date for the determination of shareholders entitled to vote on the matter. Each holder's votes will be counted together with all other shares of capital stock having general voting powers and not separately as a class, except as otherwise provided in these articles or by applicable law. In cases in which the each of the holders of shares of Series A Preferred Stock or Series B Preferred Stock are entitled to approve a matter or vote separately as a class, each holder will be entitled to one vote for each of its shares and the vote of a majority of the outstanding shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, will constitute the action of that class.

6. **Authorization of Additional Classes of Shares.** So long as shares of Series A Preferred Stock or Series B Preferred Stock remain outstanding, the Corporation shall not, without the prior written consent of holders of a majority in interest of the then outstanding shares of Series

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A Preferred Stock and Series B Preferred Stock, authorize the creation of a new class of shares having dividend rights or liquidation preferences equal or superior to the Series A Preferred Stock or Series B Preferred Stock, or improve the dividend rights or liquidation preferences of the Junior Securities such that they become equal or superior to the Series A Preferred Stock or Series B Preferred Stock.

7. **Reissuance of Shares.** Any shares of Series A Preferred Stock or Series B Preferred Stock redeemed or otherwise reacquired by the Corporation will be canceled and not available for further issuance.

8. **Definition.** As used in this Article, the term "cash" means immediately available funds constituting legal tender of the United States of America.

ARTICLE VII - Amendment of Articles of Incorporation

THIRD: The Corporation adopts the following as new Article VII (Amendment of Articles of Incorporation) of its Articles of Incorporation:

So long as any shares of the Series A Preferred Stock or Series B Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of holders of a majority in interest of the affected series of preferred stock, in addition to any other vote, consent, or approval required by law or otherwise, amend the Corporation's Articles of Incorporation or Bylaws in any manner which adversely affects the relative rights and preferences of the Series A Preferred Stock or Series B Preferred Stock or changes any of the rights, preferences, or interests of the Series A Preferred Stock or Series B Preferred Stock.

FOURTH: The Corporation adopts the following as new Article VIII (Directors) of its Articles of Incorporation:

ARTICLE VIII - Directors

The Board of Directors of the Corporation shall consist of up to seven (7) Directors. The directors shall be elected as follows:

1. So long as at least 10% of the shares of Series A Preferred Stock originally issued are outstanding (adjusted for any recapitalization), the holders of the Series A Preferred Stock, voting as

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a class, shall nominate and elect two (2) directors.

2. So long as at least 10% of the shares of Series B Preferred Stock originally issued are outstanding (adjusted for any recapitalization), the holders of the Series B Preferred Stock, voting as a class, shall nominate and elect two (2) directors, subject to the following subparagraphs (a) and (b):

(a) so long as SSM Venture Partners II, L.P. or SSM Venture Associates, L.P. (collectively, "SSM") and/or its affiliates own in the aggregate at least 50% (adjusted for any recapitalization) of the shares of Series B Preferred Stock originally issued to it, the holders of Series B Preferred Stock shall vote to elect a nominee selected by SSM as one of the directors; and

(b) so long as Jefferson Capital Partners I, L.P. ("Jefferson") and/or its affiliates own in the aggregate at least 50% (adjusted for any recapitalization) of the shares of Series B Preferred Stock originally issued to it, the holders of Series B Preferred Stock shall vote to elect a nominee selected by Jefferson as one of the directors.

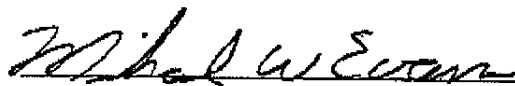
3. The holders of the Common Stock, voting as a class, shall nominate and elect two (2) directors.

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4. The seventh (7th) director shall be a person who is not a company officer or director and who is nominated by the holders of the Common Stock and reasonably acceptable to holders of a majority in interest of each of the Series A Preferred Stock and Series B Preferred Stock, and elected by the holders of the Common Stock, Series A Preferred Stock, and Series B Preferred Stock, all voting together as a single class. Directors so elected may be removed and vacancies in such seats filled only by like action. Each class may, at its option, elect fewer than the number of directors designated by this Article. The Corporation will reimburse each Director or directly pay for all reasonable out-of-pocket costs related to that Director's duties as a Director of the Corporation.

IN WITNESS WHEREOF, the Corporation has caused these Second Articles of Amendment to the Articles of Incorporation to be executed and attested by its authorized officer as of this 28th day of February, 2000.



MICHAEL W. EVANS, President
and a Director

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