

FROM

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Division of Corporations  
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VIRTA CON CORPORATION

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**VIRTACON CORPORATION**

**ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION**

**CERTIFICATE OF DESIGNATION OF RIGHTS, PREFERENCES, AND  
LIMITATIONS OF SERIES A CONVERTIBLE PREFERRED STOCK**

Pursuant to Sections 607.0602, 607.1002, and 607.1006 of the Florida Business Corporation Act (the "FBCA"), Virtacon Corporation, a Florida corporation (the "Corporation"), hereby certifies that:

**FIRST:** Pursuant to the authority of the Board of Directors of the Corporation pursuant to its Articles of Incorporation and Section 607.0602 of the FBCA, the Board of Directors of the Corporation, by resolutions adopted as of June 19, 2000, has: i) designated a series of Preferred Stock, par value \$0.01 per share, of the Corporation, to be designated "Series A Convertible Preferred Stock," consisting of 43,000 shares of the authorized but unissued Preferred Stock; ii) authorized the issuance of a maximum of 43,000 shares of Series A Convertible Preferred Stock (the "Series A Preferred"); and iii) set the rights, preferences, limitations, and other terms and conditions of the Series A Preferred Stock. Approval of the shareholders of the Corporation was not required.

**SECOND:** The Series A Preferred shall have the following designation, number of shares, rights, preferences, limitations, and other terms and conditions:

1. **Designation and Amount.** A total of 43,000 shares of Preferred Stock, \$0.01 par value per share, shall be designated "Series A Convertible Preferred Stock."
2. **Dividends.**
  - a. **General.** The holders of the Series A Preferred shall be entitled to receive dividends at the rate of \$5.00 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, payable out of any assets legally available therefor. Such dividends shall be noncumulative, and shall be payable only when, as, and if declared by the Board of Directors. Such dividends shall be payable at the Corporation's option in cash or securities of the Corporation.
  - b. **Preference.** No dividends shall be paid or declared on any Common Stock of the Corporation during any fiscal year of the Corporation until dividends in the total amount of \$5.00 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) on the Series A Preferred shall have been paid or declared and set apart during that fiscal year. After such payment to the holders of Series A Preferred has been paid or declared and set apart, any remaining dividend amounts paid within the same fiscal year shall be paid to the outstanding shares of Common Stock and Series A Preferred ratably on a per-share basis (in the

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case of the Series A Preferred, based upon the number of shares of Common Stock into which each share of the Series A Preferred is then convertible).

3. **Liquidation Preference.**

- a. **Preferential Amounts.** In the event of any liquidation, dissolution, or winding up of the Corporation (a "Liquidation Event"), either voluntarily or involuntarily, the holders of the Series A Preferred shall be entitled to receive, prior and in preference to any payment or distribution to the holders of Common Stock or any other shares of capital stock ranking junior as to liquidation, dissolution, or winding up to the Series A Preferred, an amount equal to the greater of: (i) \$50.00 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) for each share of Series A Preferred then so held, and the amount of any dividend declared but then unpaid with respect to the Series A Preferred; and (ii) the amount such holders would be entitled to receive if all shares of the Series A Preferred then held by such holders were converted into shares of Common Stock in accordance with Section 5 hereof immediately prior to such Liquidation Event.
- b. **Insufficient Assets.** If, upon a Liquidation Event, the assets and funds of the Corporation are insufficient to permit full payment the full liquidation preference to the holders of the Series A Preferred, then such remaining assets shall be distributed ratably among the holders of the Series A Preferred.
- c. **Deemed Liquidation.** For purposes of this Section 3, a "Liquidation Event" includes: (i) a sale of all or substantially all of the assets of the Corporation or; (ii) a merger, acquisition or similar transaction which results in the Corporation's stockholders immediately prior to such transaction holding less than 50% of the voting power of the surviving, continuing or purchasing entity.
- d. **Non-cash Distribution.** If any of the assets of the Corporation are to be distributed to shareholders other than in cash under this Section 3 or for any purpose, the value of the assets to be distributed will be deemed its fair market value. Any securities to be distributed to the shareholders shall be valued as follows:
  - i. If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) business days prior to the closing of the transaction;

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- ii. If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) business days prior to the closing of the transaction; and
  - iii. If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors of the Corporation.
4. **Voting Rights.** Except as set forth herein or as otherwise required by law, the holder of each share of Series A Preferred shall have the right to one vote for each share of Common Stock into which such Series A Preferred could be converted at the record date for determination of the shareholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of capital stock of the Corporation having general voting power and not counted separately as a class, except as set forth in these Articles of Incorporation. Except as otherwise required by law or as set forth in these Articles of Incorporation, the holders of Series A Preferred shall not vote separately as a class. Holders of Series A Preferred shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation.
5. **Conversion.** The holders of the Series A Preferred have conversion rights as follows:
- a. **Right to Convert.** Each share of Series A Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series A Preferred into such number of shares of Common Stock as is determined by dividing \$50.00 by the Conversion Price in effect at the time of conversion. The "Conversion Price" shall initially be \$1.25 and shall be subject to adjustment as provided below.
  - b. **Automatic Conversion.** Each share of Series A Preferred shall be converted automatically into the number of shares of Common Stock into which such shares of Series A Preferred are convertible pursuant to this Section 5, 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, upon the earlier of: (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public at a price per share of Common Stock of not less than \$6.00 per share (as adjusted for stock dividends, combinations or splits) with aggregate proceeds to the Corporation of at least \$15,000,000 (a "Qualified IPO"); or (ii) the

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election of holders of a majority of the then outstanding Series A Preferred to convert such shares into Common Stock.

- c. Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred. The Corporation shall round up fractional shares to which the holder would otherwise be entitled to the nearest whole number. Before any holder of Series A Preferred shall be entitled to convert such shares into shares of Common Stock and receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred and shall give written notice to the Corporation at such office that it elects to convert the same. The Corporation shall issue and deliver at such office to such holder of Series A Preferred a certificate or certificates for the number of shares of Common Stock to which it shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.
- d. Reservation of Stock Issuable upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A 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 A Preferred.
- e. Anti-Dilution Adjustments.
  - i. For purposes of this Section 5.e., the following definitions shall apply:
    - (1) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or deemed to be issued) by the Corporation after the Original Issue Date, other than:
      - (a) shares of Common Stock issued upon conversion of the Series A Preferred;
      - (b) shares of Common Stock issued pursuant to a stock dividend, split or other similar transaction;
      - (c) shares of Common Stock or options to purchase such shares issued to employees, consultants,

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officers or directors in accordance with stock plans approved by the Board of Directors;

- (d) shares of Common Stock issued pursuant to any warrants, options, notes or other rights outstanding as of the effective date hereof;
- (e) shares of Common Stock issued in a public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended; and
- (f) shares of Common Stock issued in connection with loan agreements, lease agreements, licensing agreements, corporate partnership agreements and merger or acquisition agreements to the extent that the transaction in which such issuance is to be made is approved by the Corporation's Board of Directors and is for purposes other than equity financing in each case.

- (2) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Series A Preferred outstanding on the Original Issue Date) or other securities directly or indirectly convertible into or exchangeable for Common Stock.
- (3) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.
- (4) "Original Issue Date" for the Series A Preferred shall mean the date on which the first share of Series A Preferred was issued.

ii. No Adjustment of Conversion Price. No adjustment in the Conversion Price of the Series A Preferred shall be made in respect to the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price of such series in effect on the date of and immediately prior to such issue.

iii. Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders

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of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number that would result in an adjustment pursuant to clause (2) below) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, or the exercise of such Options therefor, shall be deemed to be Additional Shares of Common Stock issued as of the time of the issue of such Options or Convertible Securities or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to subsection 5.e.v. hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price of the Series A Preferred in effect on the date of and immediately prior to such issue, or such record date, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

- (1) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;
- (2) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;
- (3) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any

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subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

- (a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and
- (b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;
- (4) No readjustment pursuant to clause (3)(a) or (3)(b) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of the Conversion Price on the original adjustment date, or the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and
- (5) In the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the earlier of the conversion of any shares of Preferred Stock or the expiration or exercise of all such Options, whereupon



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such adjustment shall be made in the manner provided in clause (3) above.

- iv. **Adjustment of Conversion Price of Series A Preferred upon Issuance of Additional Shares of Common Stock.** In the event that after the Original Issue Date the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subsection 5.e.iii.) without consideration or for a consideration per share less than the Conversion Price of the Series A Preferred in effect on the date of and immediately prior to such issue, then such Conversion Price of the Series A Preferred shall be reduced, concurrently with such issue, to a price (calculated to the nearest one tenth (1/10) of a cent) determined by multiplying such Conversion Price of the Series A Preferred, by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this subsection 5.e.iv., all shares of Common Stock issuable upon conversion of outstanding Series A Preferred and outstanding Convertible Securities or exercise of outstanding Options shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued, such Additional Shares of Common Stock shall be deemed to be outstanding.
- v. **Determination of Consideration.** For purposes of this Section 5, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:
- (1) **Cash and Property.** Except as provided in clause (2) below, such consideration shall:
- (a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;
- (b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the

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Board of Directors; provided, however, that no value shall be attributed to any services performed by any employee, officer or director of the Corporation; and

- (c) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received with respect to such Additional Shares of Common Stock, computed as provided in clauses (1)(a) and (1)(b) above, as determined in good faith by the Board of Directors.

- (2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 5.iii., relating to Options and Convertible Securities, shall be determined by dividing:

- (a) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by
- (b) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

- vi. Adjustments for Stock Dividends, Subdivisions, Combinations or Consolidations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock dividends,

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splits, or otherwise), into a greater number of shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

- vii. Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities or assets of the Corporation other than shares of Common Stock, in each such event provision shall be made so that the holders of Series A Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities or assets of the Corporation which they would have received had their Series A Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities or assets receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Series A Preferred.
- viii. Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Series A Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then and in each such event the holder of each share of Series A Preferred shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization or reclassification or other change by holders of the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred immediately before that change, all subject to further adjustment as provided herein.
- ix. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to Section 5, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred a certificate

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setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred, furnish or cause to be furnished to such holder a like certificate setting forth: (i) such adjustments and readjustments; (ii) the Conversion Price at the time in effect; and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Series A Preferred.

6. **Right of First Offer to Subscribe to New Issuances.** Each holder of a minimum of ten percent (10%) of the shares of Series A Preferred shall have the right of first offer to purchase such holder's pro rata share ("Pro Rata Share") of New Securities (as defined in Section 6.a.) that the Corporation may, from time to time, propose to sell and issue. Such holder's Pro Rata Share, for purposes of this right of first offer, is the ratio that the number of shares of Common Stock into which the holder's shares of Series A Preferred are then convertible (assuming conversion of all options and warrants to acquire Common Stock and all securities convertible into Common Stock) held by such holder bears to the total number of shares of Common Stock outstanding immediately prior to the time of issuance of such New Securities (assuming conversion of all options and warrants to acquire Common Stock and all securities convertible into Common Stock). This right of first offer shall be subject to the following provisions:

- a. **New Securities.** For the purposes of Section 6, "New Securities" shall mean any Common Stock or any Preferred Stock of the Corporation, whether or not now authorized, and any rights, options, or warrants to purchase said Common Stock or Preferred Stock, and securities of any type whatsoever that are, or may become, convertible into or exchangeable for Common Stock or Preferred Stock; provided, however, that "New Securities" does not include:
- i. shares of Common Stock issued upon conversion of the Series A Preferred;
  - ii. shares of Common Stock or Preferred Stock issued pursuant to a stock dividend, split or other similar transaction;
  - iii. shares of Common Stock or Preferred Stock issued to employees, consultants, officers or directors in accordance with stock plans approved by the Board of Directors;
  - iv. shares of Common Stock or Preferred Stock issued pursuant to any warrants, options, notes or other rights outstanding as of the effective date hereof;

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- v. shares of Common Stock or Preferred Stock issued in a public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended; and
- vi. shares of Common Stock or Preferred Stock issued in connection with loan agreements, lease agreements, licensing agreements, corporate partnership agreements and merger or acquisition agreements to the extent that the transaction in which such issuance is to be made is approved by the Corporation's Board of Directors and is for purposes other than equity financing in each case.

b. Mechanics of Right

- i. In the event that the Corporation proposes to issue New Securities, it shall give each such holder written notice (the "First Notice") of its intention, describing the type of New Securities, the price, and the general terms upon which the Corporation proposes to issue the same. Within 20 days after receipt of the First Notice, each holder shall give the Corporation written notice (the "Holder Notice") of its intention to purchase or obtain, at the price and on the terms specified in the Notice, a number of shares equal to or less than its Pro Rata Share of the New Securities. In addition, each Holder Notice shall state whether the holder wishes to purchase more than its Pro Rata Share of the New Securities. The Corporation shall promptly give written notice to each Investor that purchases its Pro Rata Share of the New Securities (a "Fully-Exercising Holder") of the amount of New Securities, if any, that other holders do not elect to purchase in response to the First Notice (the "Second Notice"). Each Fully-Exercising Holder shall notify the Corporation within 15 days of receipt of the Second Notice if it would like to purchase any of the unsubscribed shares and indicate the maximum number of unsubscribed shares it would like to purchase. The Corporation shall inform the Fully-Exercising Holders of the total number of unsubscribed shares available and provide the Fully-Exercising Holders with an allocation of the unsubscribed shares based on the number of shares of Common Stock (assuming conversion of all Series A Preferred into Common Stock) held by each Fully-Exercising Holder.
- ii. To the extent that the holders fail to exercise in full the right of first offer as provided in this Section 6, the Corporation shall have 90 days thereafter to sell (or enter into an agreement pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within said 90-day period) the New Securities respecting which the holders' rights were not exercised, at a price and upon

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general terms no more favorable to the purchasers thereof than specified in the Corporation's notice. In the event the Corporation has not sold the New Securities within said 90-day period (or sold and issued New Securities in accordance with the foregoing within 90 days from the date of said agreement), the Corporation shall not thereafter issue or sell any New Securities, without first offering such securities to the holders in the manner provided above.

iii. A holder's failure to exercise this right of first offer on any issuance of New Securities shall not adversely affect the holder's right of first offer to purchase subsequent issuances of New Securities.

c. Termination. The rights of first offer under this Section 6 shall not apply to and shall terminate upon a public offering of the securities of the Corporation pursuant to an effective registration statement under the Securities Act of 1933, as amended.

7. Protective Provisions. In addition to any other rights provided by law, so long as the Series A Preferred shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series A Preferred, voting separately as a single class:

- a. Take any action or amend or repeal any provision of the Corporation's Certificate of Incorporation or Bylaws if such action, amendment or repeal would materially and adversely alter or change the rights, preferences, or privileges of the Series A Preferred;
- b. increase the authorized number of shares of the Series A Preferred;
- c. authorize or issue shares of any class of stock having any preference or priority as to dividends or assets superior to the Series A Preferred.

8. Limitations on Reissuance. No share or shares of Series A Preferred acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

**THIRD:** These Articles of Amendment have been approved by the Board of Directors of the Corporation in the manner and by the vote required by the FBCA.

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**IN WITNESS WHEREOF**, the Corporation has caused these Articles of  
Amendment to be executed as of June 19, 2000.

VIRTACON CORPORATION

By: Thomas J. Hoolihan

Name: Thomas J. Hoolihan

Title: Vice President, General Counsel  
and Secretary