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TALLAHASSEE, FLORIDA

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CUSTOMER NO: 4802598

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CUSTOMER: Frank E. Dietrick, Paralegal
Dilworth, Paxson LLP
3200 Mellon Bank Cntr.
1735 Market Street
Philadelphia, PA 19103

DOMESTIC AMENDMENT FILING

NAME: HOSPITALITY SOLUTIONS
INTERNATIONAL, INC.

~~***FILE SECOND***~~

EFFECTIVE DATE:

XXX ARTICLES OF AMENDMENT
 RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XXX CERTIFIED COPY
 PLAIN STAMPED COPY
 CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Darlene Ward -- EXT#

EXAMINER'S INITIALS:

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**ARTICLES OF AMENDMENT
TO
SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
HOSPITALITY SOLUTIONS INTERNATIONAL, INC.
FOR
DESIGNATION OF
PREFERENCES, RIGHTS AND LIMITATIONS
OF
SERIES D CONVERTIBLE PREFERRED STOCK**

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FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Sections 607.0602 and 607.1006 of the Florida Business Corporation Act, Hospitality Solutions International, Inc., a corporation organized and existing under the Florida Business Corporation Act (the "Corporation"), hereby adopts the following Articles of Amendment to its Articles of Incorporation. The Articles of Amendment were adopted at a duly convened meeting of the Board of Directors held on October 27, 2000. The holders of (i) a majority of the shares of the Corporation's issued and outstanding shares of Series A-B Preferred Stock and (ii) a majority of the shares of the Corporation's issued and outstanding Series C Preferred Shares consented in writing to the adoption of the Articles of Amendment. Other than as aforesaid, the affirmative vote or consent of holders of shares of any class or series of the Corporation's capital stock was not required to adopt the Articles of Amendment.

FIRST: Designation of Series D Convertible Preferred Stock

Of the Fifteen Million (15,000,000) shares of Preferred Stock, par value \$0.04 per share, authorized pursuant to Article IV of the Second Amended and Restated Articles of Incorporation of the Corporation, Two Million Five Hundred Fifty Thousand (2,550,000) of such shares are hereby designated as Series D Convertible Preferred Stock (the "Series D Preferred Shares" and, together with the shares of Series C Convertible Preferred Stock, the "Series C-D Preferred Stock").

The powers, designations, preferences, and relative, participating, optional or other special rights of the Preferred Stock authorized hereunder and the qualifications, limitations and restrictions of such preferences and rights are as set forth on Exhibit A hereto.

The holders of a majority of the shares of each series of the Corporation's Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Series C Convertible Preferred Stock outstanding as of the date hereof have waived any adjustment of the applicable Conversion Price to the issued and outstanding Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Series C Convertible Preferred Stock in the case of issuance of the Series D Preferred Shares.

IN WITNESS WHEREOF, these Articles of Amendment to Second Amended and Restated Articles of Incorporation have been executed by the undersigned duly authorized officer of the Corporation as of the 10th day of November, 2000

**HOSPITALITY SOLUTIONS
INTERNATIONAL, INC.**

By: 
Eric L. Blum
President and Chief Executive Officer

EXHIBIT A TO DESIGNATION
OF
PREFERENCES, RIGHTS AND LIMITATIONS
OF
SERIES D CONVERTIBLE PREFERRED STOCK
OF
HOSPITALITY SOLUTIONS INTERNATIONAL, INC.

Section 1. Series D Convertible Preferred Stock. 2,550,000 shares of the authorized and unissued shares of \$.04 par value Preferred Stock of the Corporation are hereby designated "Series D Convertible Preferred Stock" (the "Series D Preferred Shares"), and, collectively with the Corporation's Series C Convertible Preferred Stock, the "Series C-D Preferred Stock", with the following powers, preferences and rights, and the qualifications, limitations and restrictions thereon:

Section 2. Voting.

A. General. Except as may be otherwise provided in the Articles of Incorporation or by law, the holders of the Series D Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the shareholders of the Corporation. Each share of the Series D Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock (including fractions of a share) into which each share of the Series D Preferred Stock is then convertible.

Section 3. Dividends.

A. Series D Preferred Stock Dividends. The holders of Series D Preferred Shares, in preference to the holders of Common Stock, shall be entitled to receive, whether or not declared by the Board of Directors, but only out of funds that are legally available therefor, cumulative dividends at the rate of ten percent (10%) of the "Original Issue Price" per annum on each outstanding Series D Preferred Share (such dividends, the "Fixed Dividends"). The Original Issue Price of Series D Preferred Shares, shall be \$1.00 per share (the "Series D Per Share Amount") (subject to adjustment in the event of stock dividends, combinations, recapitalizations, splits and the like). The Fixed Dividends shall accrue on each Series D Preferred Share beginning on November 13, 2000.

B. Common Stock Dividends. The holders of the Series D Preferred Shares shall also be entitled to receive, out of funds legally available therefor, dividends at the same rate as dividends (other than dividends paid in additional shares of Common Stock) are paid with respect to the Common Stock (treating each Series D Preferred Share as being equal to the number of shares of Common Stock (including fractions of a share) into which each share of the Series D Preferred Stock is then

convertible). No dividends shall be declared or paid on shares of Common Stock unless and until all accrued but unpaid Fixed Dividends on Series D Preferred Shares, and such other dividends as are declared but unpaid with respect to Series D Preferred Shares, are paid.

Section 4. Liquidation/Transaction Event.

A. Series D Preferred Shares.

(1) Liquidation Payments. Upon any Transaction Event (as defined below) the holders of Series D Preferred Shares shall be entitled to be paid, before any distribution or payment is made upon Common Stock or any other stock that is junior to the Series D Preferred Shares, but on equal priority with the Series A Preferred Shares, the Series B Preferred Shares and the Series C Preferred Shares, an amount equal to the sum of (i) the Series D Per Share Amount, (as such amount is adjusted for stock dividends, combinations, recapitalizations, splits and the like) plus all accrued but unpaid Fixed Dividends and (ii) an amount computed on the basis of the number of shares of Common Stock which would be held by such holders if immediately prior to such Transaction Event all of the outstanding shares of each series of Preferred Stock had been converted into shares of Common Stock.. The amount payable with respect to one Series C Share shall be sometimes referred to as the "Series C Liquidation Payment" and the amount payable with respect to one Series D Share shall be sometimes referred to as the "Series D Liquidation Payment". The Series A Liquidation Payment, the Series B Liquidation Payment, and the Series C Liquidation Payment and the Series D Liquidation Payment shall individually be referred to as the "Applicable Liquidation Payment" and collectively as the "Applicable Liquidation Payments."

(2) Definitions.

(i) For purposes hereof, the term "Transaction Event" shall mean any of the following, unless the holders of at least a majority (50%) of the then outstanding shares of Series C-D Preferred Stock, voting together as a single class, elect otherwise:

(a) a consolidation, merger or share exchange (other than a consolidation or merger in which the holders of voting securities of the Corporation immediately before the consolidation or merger own (immediately after the consolidation or merger) voting securities of the surviving or acquiring corporation, or a parent party of such surviving or acquiring corporation, possessing more than 50% of the voting power of such surviving or acquiring corporation or parent party) involving the Corporation; or

(b) a sale, lease, abandonment, transfer, license (other than license in the ordinary course of business of the Corporation consistent with past custom and practice (including with respect to quantity and

frequency)) or other disposition, in one or a series of transactions, of "Substantially All of the Assets" (as defined below) of the Corporation; or

(c) the liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary; or

(d) any other transaction or series of related transactions, including without limitation, the sale of voting securities of the Corporation, that result in the holders of voting securities of the Corporation immediately before such transaction owning (immediately after such transaction) voting securities of the Corporation possessing 50% or less of the voting power of the Corporation.

(ii) For purposes hereof, the term "Substantially All of the Assets" shall mean the assets of the Corporation that during the immediately preceding four fiscal quarter year periods generated eighty percent (80%) or more of the Corporation's EBITDA for such periods. For purposes hereof, EBITDA, for any period, shall equal to the sum of (a) net income (or loss) of the Corporation and its subsidiaries determined on a consolidated basis for such period, plus (b) interest expense for such period of the Corporation and its subsidiaries determined on a consolidated basis, plus (c) federal and state income tax deductions in calculating net income for such period, plus (d) to the extent deducted in the calculation of net income for such period, depreciation and amortization expenses, in each case determined on a consolidated basis of the Corporation and its subsidiaries in accordance with the United States generally accepted accounting principles and consistent with those utilized in the preparation of the Corporation's financial statements,

C. Ratable Distributions. If upon a Transaction Event, and if such Transaction Event is also a Liquidation Event, such Liquidation Event, the assets to be distributed among the holders of the applicable series of Preferred Stock shall be insufficient to permit payment to the holders of the applicable series of Preferred Stock of the Applicable Liquidation Payments, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Preferred Stock entitled to an Applicable Liquidation Payment in proportion to the aggregate Applicable Liquidation Payments payable in respect of the shares of applicable series of Preferred Stock held by each such holder.

D. Common Stock and Junior Stock.

(1) Transaction Event. Upon any Transaction Event (which is not a Liquidation Event) after the holders of Series C-D Preferred Stock shall have been paid in full the Applicable Liquidation Payment, the remaining net assets of the Corporation may be distributed to the holders of Common Stock, Series A-B Preferred Stock and other stock ranking on liquidation junior to the Series C-D Preferred Stock. Written notice of such a Transaction Event, stating a payment date, the amount of the Applicable Liquidation Payments and the place where said Applicable Liquidation Payments shall be payable, shall be delivered in person, mailed by certified or registered

mail or courier service, return receipt requested, or sent by telecopier or telex, not less than twenty (20) days prior to the payment date stated therein, to the holders of record of shares of Series C-D Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

(2) Liquidation Event. Upon any Transaction Event (which is a Liquidation Event) after the holders of Preferred Stock shall have been paid in full the Applicable Liquidation Payment, the remaining net assets of the Corporation may be distributed to the holders of Common Stock and other stock ranking on liquidation junior to Preferred Stock. Written notice of such a Transaction Event, stating a payment date, the amount of the Applicable Liquidation Payments and the place where said Applicable Liquidation Payments shall be payable, shall be delivered in person, mailed by certified or registered mail or courier service, return receipt requested, or sent by telecopier or telex, not less than twenty (20) days prior to the payment date stated therein, to the holders of record of Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

Section 5. Restrictions.

A. Series D Preferred Shares. So long as twenty-five percent (25%) of the originally issued Series D Preferred Shares are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Articles of Incorporation and in addition to any other vote required by law or the Articles of Incorporation, without the approval of the holders of at least a majority (50%) of then outstanding Series D Preferred Shares, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a single series, the Corporation will not:

- (1) Effect a Transaction Event;
- (2) Permit any Subsidiary to sell or issue any equity securities to any Person other than the Corporation;
- (3) Change the size of the Board of Directors of the Corporation;
- (4) Create, incur, assume, or guarantee indebtedness for money borrowed with a duration of greater than one (1) year, or increase the amount of any indebtedness outstanding under any loan agreement, mortgage, or other borrowing arrangement with a duration of greater than one (1) year, in each case requiring payment by the Company in excess of \$2,000,000;
- (5) Amend the 1999 Stock Option Plan or the 1999 Non-Employee Stock Option Plan to increase the number of shares of Common Stock issuable thereunder or adopt any new stock option plan;

(6) Create or authorize the creation of any additional class or series of shares of stock unless the same ranks junior to the Series D Preferred Shares as to the distribution of assets in a Transaction Event, or increase the authorized amount of the Series D Preferred Shares or increase the authorized amount of any additional class or series of shares of stock unless the same ranks junior to the Series D Preferred Shares as to the distribution of assets in a Transaction Event, or create or authorize any obligation or security convertible into Series D Preferred Shares or into shares of any other class or series of stock unless the same ranks junior to the Series D Preferred Shares as to the distribution of assets in a Transaction Event, whether any such creation, authorization or increase shall be by means of amendment to the Articles of Incorporation or by merger, consolidation or otherwise;

(7) Amend, alter or repeal the Articles of Incorporation and the Corporation's Bylaws if the effect would be detrimental or adverse in any manner with respect to the rights of the holders of the Series D Preferred Shares;

(8) Redeem or otherwise acquire any shares of Preferred Stock except pursuant to a purchase offer made pro rata to all holders of the shares of Preferred Stock on the basis of the aggregate number of outstanding shares of Preferred Stock then held by each such holder;

(9) Change the compensation of the Corporation's Chairman, Chief Executive Officer, President, Chief Operating Officer and Chief Financial Officer;

(10) Except as provided for in Section 7 below, redeem or otherwise acquire any shares of Common Stock or Preferred Stock, except for shares repurchased from employees upon termination of such employees' employment with the Corporation and shares repurchased from any shareholder of the Corporation pursuant to an agreement entered into by the Corporation and such shareholder prior to June 15, 2000; or

(11) Declare any dividend on any shares of Common Stock in which the Series D Preferred Shares do not share ratably.

B. Definitions. For purposes of this Section, the following terms shall have the following meanings:

(1) "Person" shall mean an individual, a partnership, a corporation, limited liability company, an association, a joint stock company, a trust, a joint venture, any other form of business organization, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

(2) "Subsidiary" shall mean any corporation or other organization, whether incorporated or unincorporated, in which the Corporation owns, directly or indirectly, any equity or other ownership interest.

Section 6. Conversions. The holders of Series D Preferred Shares shall have the following conversion rights:

A. Right to Convert. Subject to the terms and conditions of this Section 6, the holder of any Series D Preferred Share shall have the right, at its option at any time or from time to time, to convert any such Series D Preferred Share (except that upon any Transaction Event with respect to the Series D Preferred Shares, the right of conversion shall terminate at the close of business on the business day fixed for payment of the amount distributable on the Series D Preferred Shares) into such number of fully paid and nonassessable shares of Common Stock as is obtained by (a) multiplying the number of Series D Preferred Shares so to be converted by the Series D Per Share Amount and (b) dividing the result by the conversion price of \$1.00 per share or, in case an adjustment of such price has taken place pursuant to the further provisions of this Section 6, then by the conversion price as last adjusted and in effect at the date any Series D Preferred Shares are surrendered for conversion. The conversion price, or such price as last adjusted and in effect at the date of conversion, for the Series D Preferred Shares shall be referred to as its "Conversion Price". Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of Series D Preferred Shares into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued.

B. Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in Section 6.A. and surrender of the certificate or certificates for the Series D Preferred Shares to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such Series D Preferred Shares. To the extent permitted by law, such conversion shall be deemed to have been effected and the applicable Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such Series D Preferred Shares shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

C. Fractional Shares; Dividends; Partial Conversion. No fractional shares of Common Stock shall be issued upon conversion of Series D Preferred Shares into Common Stock. If any fractional share of Common Stock would, except for the provisions of the first sentence of this Section 6.C., be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Series D Preferred Shares for conversion an amount in cash equal to the current fair value of such fractional share as determined in good faith by the Board of Directors of the Corporation. At the time of each conversion of Series D Preferred Shares, except in the event of a Qualified Public Offering (as defined below), the Corporation shall pay in cash an amount equal to all Fixed Dividends and any other dividends accrued or declared and unpaid on Series D Preferred Shares surrendered for conversion to the date upon which such conversion is deemed to take place as provided in Section 6.B. In case the number of Series D Preferred Shares represented by the certificate or certificates surrendered pursuant to Section 6.A. exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of Series D Preferred Shares represented by the certificate or certificates surrendered which are not to be converted.

D. Adjustment of Price Upon Issuance of Common Stock. Except as provided in Section 6.E., if and whenever the Corporation shall issue or sell, or is, in accordance with Sections 6.D.(1) through 6.D.(7), deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the applicable Conversion Price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the applicable Conversion Price shall be reduced to the price determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by the then existing applicable Conversion Price and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) the total number of shares of Common Stock outstanding immediately after such issue or sale.

For purposes of this Section 6.D., the following Sections 6.D.(1) to 6.D.(7) shall also be applicable:

(1) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the

Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the applicable Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except, as otherwise provided in Section 6.D.(3), no adjustment of the applicable Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

(2) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the applicable Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in Section 6.D.(3), no adjustment of the applicable Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the applicable Conversion Price have been or are to be made pursuant to other provisions of this Section 6.D., no further adjustment of the applicable Conversion Price shall be made by reason of such issue or sale.

(3) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase provided for in any Option referred to in Section 6.D.(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Sections 6.D.(1) or 6.D.(2), or the rate at which Convertible Securities referred to in Sections 6.D.(1) or

6.D.(2) are convertible into or exchangeable for Common Stock shall change at any time (including but not limited to, changes under or by reason of provisions designed to protect against dilution), the applicable Conversion Price in effect at the time of such event shall forthwith be readjusted to the applicable Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold, but only if as a result of such adjustment the applicable Conversion Price then in effect hereunder is thereby reduced; and on the termination of any such Option or any such right to convert or exchange such Convertible Securities, the applicable Conversion Price then in effect hereunder shall forthwith be increased to the applicable Conversion Price which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(4) Stock Dividends. Except for dividends or distributions upon the Common Stock, in the event that the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock, Options or Convertible Securities, any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold at a price per share equal to \$.01.

(5) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

(6) Record Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (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, then such record date shall 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 such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(7) Treasury Shares. The disposition of any shares of Common Stock owned or held by or for the account of the Corporation shall be considered an issue or sale of Common Stock for the purpose of this Section 6.D.

E. Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the applicable Conversion Price in the case of issuance from and after June 15, 2000 of (i) up to an aggregate of 1,978,582 shares (appropriately adjusted to reflect the occurrence of any event described Section 6.F) of Common Stock to directors, officers, employees or consultants of the Corporation in connection with their service as directors of the Corporation, their employment by the Corporation or their retention as consultants by the Corporation, plus such number of shares of Common Stock which are repurchased by the Corporation from such persons after such date pursuant to contractual rights held by the Corporation and at repurchase prices not exceeding the respective original purchase prices paid by such persons to the Corporation therefor, (ii) any securities to any Person in connection with corporate partnering transactions, equipment financings, bank financings, vendor financings or acquisition of businesses or intellectual property rights, (iii) the Series C Preferred Shares; and (iv) the Series D Preferred Shares through January 31, 2001, provided that in each such case the subject transaction is approved by the Company's Board of Directors.

F. Subdivision or Combination of Common Stock. In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares, the applicable Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the applicable Conversion Price in effect immediately prior to such combination shall be proportionately increased. In the case of any such subdivision, no further adjustment shall be made pursuant to Section 6D(4) by reason thereof.

G. Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holder of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including,

without limitation, provisions for adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

H. Failure to Redeem. If the Corporation fails, for any reason or for no reason, to redeem on the applicable Redemption Date (as defined in Section 7 below) the applicable portion of the Series D Preferred Shares in accordance with the terms and conditions of Section 7, the applicable Conversion Price then in effect with respect to the Series D Preferred Shares shall be immediately reduced by an amount equal to 2.5% thereof. Thereafter, until such redemption of the Series D Preferred Shares has been made in full in accordance with such terms and conditions, the Applicable Conversion Price shall be further reduced on the 90th day following the applicable Redemption Date and at the end of each 90-day period thereafter by an amount equal to 2.5% of the applicable Conversion Price in effect immediately prior to each such reduction.

I. Notice of Adjustment. Upon any adjustment of the applicable Conversion Price, then and in each such case the Corporation shall give written notice thereof, by mailing such notice by United States Postal Service via Certified or Registered Mail, Return Receipt Requested, addressed to each holder of shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the applicable Conversion Price resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

J. Other Notices. In case at any time:

(1) the Corporation shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(2) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights; or

(3) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into another entity or entities, or a sale, lease, abandonment, transfer or other disposition of all or substantially all its assets, including, without limitation any Liquidation Event and/or Transaction Event;

then, in any one or more of said cases, the Corporation shall give, by mailing such notice(s) by United States Postal Service via Certified or Registered Mail, Return Receipt Requested, or reputable courier service addressed to each holder of any shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 20 days' prior written notice of the date on which the books of the Corporation

shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, including, without limitation any Liquidation Event and/or Transaction Event and (b) in the case of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, including, without limitation any Liquidation Event and/or Transaction Event at least 20 days prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, including, without limitation any Liquidation Event and/or Transaction Event, as the case may be.

K. Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Series D Preferred Shares as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding Series D Preferred Shares. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the applicable Conversion price in effect at the time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed. The Corporation will not take any action which results in any adjustment of the applicable Conversion price if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Series D Preferred Shares would exceed the total number of shares of Common Stock then authorized by the Articles of Incorporation.

L. No Reissuance of Series D Preferred Shares. Series D Preferred Shares which are converted into shares of Common Stock as provided herein shall not be reissued.

M. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Series D Preferred Shares shall be made without charge to the holders thereof for issuance tax in respect thereof, if any, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series D Preferred Shares which are being converted.

N. Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Series D Preferred Shares or of any shares of Common Stock issued or issuable upon the conversion of any Series D Preferred Shares in any manner which interferes with the timely conversion of such Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

O. Definition of Common Stock. As used in this Section 6, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, \$0.000001332 par value per share, as constituted on the date of filing of this Designation, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall not be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Common Stock receivable upon conversion of Series D Preferred Shares shall include only shares designated as Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets provided for in Section 6.G.

P. Conversion.

(1) Mandatory Conversion - Qualified Public Offering. If at any time the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock (i) in which the offering price is at least three times the Conversion Price of the Series B Preferred Shares; and (ii) the proceeds received for such shares by the Corporation (net of underwriting discounts and commissions and offering expenses) shall be at least \$10,000,000 (a "Qualified Public Offering"), then effective upon the closing of the sale of such shares by the Corporation pursuant to such public offering, all outstanding Series D Preferred Shares shall automatically convert to shares of Common Stock on the basis set forth in this Section 6 and (a) any accumulated but unpaid Fixed Dividends shall be canceled and forgiven and (b) any other accumulated but unpaid dividends or any Series D Preferred Shares shall be paid in cash. Holders of Series D Preferred Shares so converted may deliver to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to such holders) during its usual business hours, the certificate or certificates for the shares so converted. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash payment in lieu of fractional shares to which such holder may be entitled pursuant to Section 6.C. Until such time as a holder of Series D Preferred Shares shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof. Notwithstanding anything else in the Articles of Incorporation, if at any time the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock (i) in which the offering price is at least two times the Conversion Price of the Series C Preferred Shares and (ii) the

proceeds received for such shares by the Corporation (net of underwriting discounts and commissions and offering expenses) shall be at least \$10,000,000, then effective upon the closing of the sale of such shares by the Corporation pursuant to such public offering, all accumulated but unpaid Fixed Dividends upon the Series D Preferred Shares shall be canceled and forgiven and no Fixed Dividends shall thereafter be paid or payable upon the Series D Preferred Shares.

(2) Voluntary Conversion - Election of Series D Preferred Shares. The holders Series D Preferred Shares may, upon the vote, election or consent of holders of at least a majority (50%) of the outstanding Series D Preferred Share, cause all of the outstanding Series D Preferred Shares to be converted into Common Stock in accordance with this Section 6.

Section 7. Redemption. The shares of Preferred Stock shall be redeemed as follows:

A. Optional Redemption. Commencing at any time on or after December 31, 2004, and on each of the next two anniversaries thereafter (the "Redemption Dates", and each a "Redemption Date"), at the option of the holders at least a majority (50%) of the then outstanding Series D Preferred Shares, voting as a separate series and only with respect to the Series D Preferred Shares (the "Series D Electing Holders"), then all outstanding Series D Preferred Shares shall be redeemed by the Corporation, at the price and terms stated in this Section 7, and as follows:

<u>On or After</u>	<u>% of Each Series of Preferred Stock then Outstanding</u>
December 31, 2004	33%
December 31, 2005	50%
December 31, 2006	100%

B. Redemption Price and Payment.

(1) Series D Preferred Shares. The Series D Preferred Shares shall be redeemed by paying for each share in cash an amount equal to the Series D Liquidation Payment, such amount being referred to as the "Series D Redemption Price". Such payment shall be made in full on the applicable Redemption Date to the holders entitled thereto. To the extent that determination of the Series D Liquidation Payment, and by definition, the Series D Redemption Price, requires the determination of the fair market value of the shares of any class or series of capital stock of the Corporation, such fair market value shall be determined in good faith by the Board of Directors of the Corporation as of each Redemption Date after taking into consideration all factors which it deems appropriate including, without limitation, valuation or comparable publicly-held and privately-held companies, but without any discount for minority ownership position, lack of marketability or similar factors. The Board of Directors shall notify the holders of Series D Preferred Shares as to its determination of

the derived Series D Redemption Price, at the time of delivery of the Redemption Notice to such holders pursuant to Section 7.D. below. The Series D Electing Holders shall have the right, after receiving notice of such determination, within five business days of any given Redemption Date, to contest such determination. In such case, Series D Electing Holders shall have the right to elect an independent appraisal firm, at their own expense, to make such determination, which firm shall be acceptable to the Corporation in its sole discretion. If the independent appraisal firm is not so acceptable, the Corporation shall select an independent appraisal firm, at its own expense, and the independent appraisal firm selected by the Corporation and by the Series D Electing Holders shall jointly select a third independent appraisal firm, which shall make such determination. Each of the Corporation and the Series D Electing Holders, as a group, shall pay half of the costs and expenses of the third independent appraisal firm. The independent appraisal firm so chosen shall not be informed of the identity of the party paying its fee, and shall make its determination as to the Series D Redemption Price within seven business days of engagement, which determination shall be final.

(3) Redemption Procedure. Each redemption of Series D Preferred Shares shall be made so that the number of shares of Preferred Stock held by each registered holder shall be reduced in an amount which shall bear the same ratio to the total number of shares of Preferred Stock being so redeemed as the number of Series D Preferred Shares then held by such registered holder bears to the aggregate number of Series D Preferred Shares then outstanding.

C. Equitable Adjustment. The Series D Redemption Price set forth in this Section 7 shall be subject to equitable dividend, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the Series D Preferred Shares.

D. Redemption Mechanics. If the holders of Series D Preferred Shares elect to have the Corporation redeem all outstanding shares of such Series D Preferred Shares as aforesaid, notice to that effect shall be given by such holders to the Corporation at least 60 days prior to the Redemption Date, which notice shall also set forth the date fixed for redemption pursuant to this Section 7 (hereinafter referred to as the "Redemption Date"). If such notice is given, then at least 45 days prior to the Redemption Date, written notice (hereinafter referred to as the "Redemption Notice") shall be mailed, postage prepaid, by the Corporation to each holder of record of each series of Preferred Stock, whether or not such Series D Preferred Shares are to be redeemed, at its address shown on the records of the Corporation; provided, however, that the Corporation's failure to give such Redemption Notice shall in no way affect its obligation to redeem the Series D Preferred Shares as provided in Section 7 hereof. The Redemption Notice shall contain the following information:

(i) the number of Series D Preferred Shares of each series held by the holder which shall be redeemed by the Corporation and the total number of Series D Preferred Shares held by all holders to be so redeemed;

Price; and (ii) the Redemption Date and the Series D Redemption

(iii) that the holder is to surrender to the Corporation, at the place designated therein, its certificate or certificates representing the Series D Preferred Shares to be redeemed.

If the Redemption Notice is given with respect to the redemption of Series A-B Preferred Stock or Series C Preferred Stock, the requisite percentage of the holders of shares of Series D Preferred Stock may, within seven (7) days of receipt of such Redemption Notice, by notice given to the Corporation (the "Series D Notice"), elect to have the Corporation redeem all outstanding shares of Series D Preferred Stock. Within seven (7) days of receipt of the Series D Notice, the Corporation shall amend the Redemption Notice to reflect the election by the holders of the requisite percentage of Series D Preferred Stock to have all outstanding shares of Series D Preferred Stock so redeemed by the Corporation and recirculate such Redemption Notice, as amended, to all holders of shares of Preferred Stock.

E. Surrender of Certificates. Each holder of Series D Preferred Shares to be redeemed shall surrender the certificate(s) representing such shares to the Corporation at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares as set forth in this Section 7 shall be paid to the order of the person whose name appears on such certificate(s) and each surrendered certificate shall be canceled and retired. In the event some but not all of the Series D Preferred Shares represented by certificate(s) surrendered by a holder are being redeemed, the Corporation shall execute and deliver to or on the order of the holder, at the expense of the Corporation, a new certificate representing the number of Series D Preferred Shares which were not redeemed.

F. Dividends and Conversion after Redemption. From and after the later of the Redemption Date of 45 days from the date the Corporation shall have given the Redemption Notice, no Series D Preferred Shares subject to redemption shall be entitled to any further dividends pursuant to Section 7 hereof or to the conversion provisions set forth in Section 7 hereof.

G. Redeemed or Otherwise Acquired Shares to be Retired. Any Series D Preferred Shares redeemed pursuant to this Section 7 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporation action as may be necessary to reduce accordingly the number of authorized shares of Preferred Stock.

Section 8. Voting Right.

A. Change in Board Composition. So long as any shares of Series C-D Preferred Stock remain outstanding (such number of shares being subject to

proportional adjustment to reflect any combination or subdivision of such Series C Preferred Shares or Series D Preferred Shares, as applicable, or dividends declared in shares of such stock), in the event an Event of Default (as defined below) occurs, then the holders of at least a majority (50%) of all outstanding Series C Preferred Shares or Series D Preferred Shares, as applicable, to which the Event of Default pertains (the "Voting Preferred Shares") shall (immediately upon the giving of written notice to the Company by the holders of a majority of the then outstanding Voting Preferred Shares), voting together as a separate class, be entitled to elect such number of directors as will be sufficient to permit the holders of Voting Preferred Shares to elect a majority of the directors of the Company (such right, the "Voting Right"). Upon the election by the holders of Voting Preferred Shares to exercise the Voting Right, the maximum authorized number of members of the Board of Directors of the Corporation shall automatically be increased to the extent necessary to create any vacancy required by the provisions of this Section 8.A. If, after the election of the additional directors pursuant to this Section 8.A, the Event of Default is cured, then the holders of the Voting Preferred Shares shall be divested of the Voting Right and the maximum authorized number of members of the Board of Directors of the Corporation shall automatically be reduced to the extent that such number was increased at the time when the terminated Voting Right became operative and the term of office of any director then in office elected by the holders of Series Preferred Shares pursuant to this Section 8.A shall terminate immediately. However, the Voting Right shall again accrue to the holders of Voting Preferred Shares in case of any later occurrence of an Event of Default.

B Voting Right Procedure. Whenever under the provisions of this Section 8 hereof, the right shall have accrued to the holders of the Voting Preferred Shares to vote as a single class to elect a majority of the Corporation's directors, the Board of Directors of the Corporation shall, within ten (10) days after delivery to the Corporation at its principal office of a request to such effect by the holders of a majority (50%) of the then outstanding Voting Preferred Shares, call a special meeting of shareholders for the election of directors, to be held upon not less than ten (10) nor more than twenty (20) days' notice to such holders. If such notice of meeting is not given within the ten (10) days required above, the holders of Voting Preferred Shares requesting such meeting may also call such meeting and for such purposes shall have access to the stock books and records of the Corporation. At any meeting so called or at any other meeting held while the holders of shares of Voting Preferred Shares shall have the voting power provided in this Section 8, the holders of a majority of Voting Preferred Shares present in person or by proxy or voting by written consent, shall be sufficient to constitute a quorum for the election of directors as herein provided. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Voting Preferred Shares pursuant this Section 8, the remaining directors so elected by that class may by affirmative vote of a majority of such directors (or the remaining director so elected if there be but one) elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant, provided that if there are no remaining directors so elected by that class, the vacancies may be filled by the affirmative vote of the holders of a majority of the then outstanding Voting Preferred Shares, voting together as a separate class, given either at a special

meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders. Any directors who shall have been elected by the holders of Voting Preferred Shares pursuant to this Section 8 or by any directors so elected as provided in the next preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of a majority of the then outstanding Voting Preferred Shares who elected such director or directors, given either at a special meeting of such shareholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of Voting Preferred Shares represented at such meeting or pursuant to such written consent.

(3) Event of Default. An "Event of Default" shall mean failure of the Corporation to redeem any Series C Preferred Shares or Series D Preferred Shares as required pursuant to the Articles of Incorporation of the Corporation.

Section 9. Amendments. The provisions of this Designation may be amended or modified by the Board of Directors of the Corporation with the consent of the holders of a majority of the issued and outstanding Series D Preferred Shares but without the consent or affirmative vote of the holders of any other class or series of the Corporation's capital stock.

Section 10. Definitions. Capitalized terms used in this Designation which are defined in the Articles of Incorporation or in the Articles of Amendment to Second Amended and Restated Articles of Incorporation of the Corporation for Amendment of Designation of Preferences, Rights And Limitations of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Series C Convertible Preferred Stock (the "Series A-B-C Amending Designation") shall have the meanings set forth in the Second Amended and Restated Articles of Incorporation or in the Series A-B-C Amending Designation, as applicable, unless otherwise defined herein.