

F08000005390

(Requestor's Name)

(Address)

(Address)

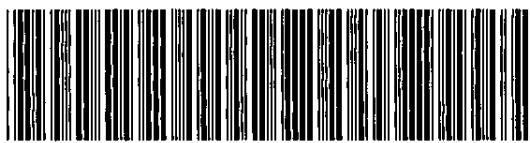
(City/State/Zip/Phone #)

PICK-UP     WAIT     MAIL

(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_



800139207338

EFFECTIVE DATE  
12-31-08

FLORIDA STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

RECEIVED

08 DEC 29 AM 10:37

FLORIDA STATE  
DIVISION OF CORPORATIONS

08 DEC 29 PM 3:37

Merge  
C.COULLIETTE  
DEC 29 2008  
EXAMINER

Office Use Only

Special Instructions to Filing Officer:



CORPORATION SERVICE COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 831530 7183836

AUTHORIZATION :

COST LIMIT : *Lynda S. Lerner* \$70.00

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ORDER DATE : December 18, 2008

ORDER TIME : 2:55 PM

ORDER NO. : 831530-100

CUSTOMER NO: 7183836

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ARTICLES OF MERGER

BENNER & ASSOCIATES, INC.

INTO

RESPIRONICS, INC.

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY  
       PLAIN STAMPED COPY

CONTACT PERSON: Joyce Markley

EXAMINER'S INITIALS: \_\_\_\_\_

## **ARTICLES OF MERGER** (Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, Florida Statutes.

**First:** The name and jurisdiction of the surviving corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (If known/ applicable)
Respironics, Inc.	Delaware	F08000005390

**Second:** The name and jurisdiction of each merging corporation:

**Third:** The Plan of Merger is attached.

**Fourth:** The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

**OR** 12 / 31 / 2008 (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days after merger file date.)

**Fifth: Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)**  
The Plan of Merger was adopted by the shareholders of the surviving corporation on \_\_\_\_\_.

The Plan of Merger was adopted by the board of directors of the surviving corporation on 12/22/2008 and shareholder approval was not required.

**Sixth: Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)**  
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on 12/22/2008 and shareholder approval was not required.

(Attach additional sheets if necessary)

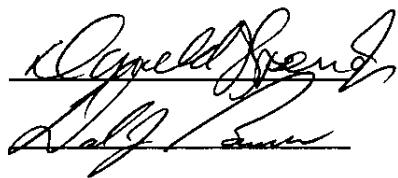
**Seventh: SIGNATURES FOR EACH CORPORATION**

Name of Corporation

Signature of an Officer or  
Director

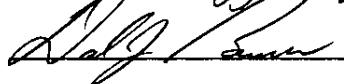
Typed or Printed Name of Individual & Title

Respirronics, Inc.



Donald J. Spence, President

Benner & Associates, Inc.



Daniel J. Bevevino, Vice President

## **AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER ("Agreement") dated as of the 22nd day of December, 2008 by and between RESPIRONICS, INC., a Delaware corporation ("Respironics" or the "Surviving Corporation"), and BENNER & ASSOCIATES, INC., a Florida corporation ("BAI") (Respironics and BAI are herein sometimes collectively referred to as the "Constituent Corporations").

WITNESSETH:

WHEREAS, the Constituent Corporations desire that BAI be merged with and into Respironics, with Respironics being the surviving corporation, upon the terms and conditions set forth herein;

WHEREAS, the Board of Directors of Respironics has adopted resolutions approving this Agreement in accordance with the applicable provisions of the Delaware General Corporation Law (the "DGCL"); and

WHEREAS, the Board of Directors of BAI has adopted resolutions approving this Agreement in accordance with the applicable provisions of the Florida Business Corporation Act ("FBCA").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Respironics and BAI hereby agree as follows:

**1. Terms of Merger.** At the Effective Time (as hereinafter defined), BAI shall be merged with and into Respironics pursuant to the applicable provisions of the FBCA and the DGCL (the "Merger").

**2. Surviving Corporation.** The corporation surviving the Merger shall be Respironics.

**3. Treatment of Shares.** At the Effective Time, (a) the shares of capital stock of Respironics issued and outstanding immediately prior to the Merger shall remain outstanding, without change therein by reason of the Merger; (b) each share of capital stock of BAI issued and outstanding immediately prior to the Merger shall, by virtue of the Merger and without any action on the part of the holder thereof, be deemed retired and cancelled without necessity of further action.

**4. Effective Time.** If this Agreement is not terminated as contemplated by Section 8 hereof, (i) a Certificate of Ownership and Merger (the "Certificate of Merger"), executed in accordance with the DGCL, shall be delivered to the Delaware Secretary of State for filing and (ii) Articles of Merger (the "Articles of Merger"), executed in accordance with the FBCA, shall be delivered to the Florida Secretary of State for filing. The Merger shall become effective at 11:59 p.m. on December 31, 2008 (the "Effective Time").

**5. Articles of Incorporation.** The Articles of Incorporation of Respironics as in effect at the Effective Time, from and after the Effective Time and until further amended as provided by applicable law, shall be, and may be separately certified as, the Articles of Incorporation of the Surviving Corporation.

6. **Bylaws.** The Bylaws of Respironics, as in effect at the Effective Time, shall be the Bylaws of the Surviving Corporation, to remain unchanged until amended in accordance with the provisions thereof and of applicable law.

7. **Directors and Officers.** At the Effective Time, the Board of Directors of the Surviving Corporation shall consist of those persons who were directors of Respironics immediately prior to the Effective Time, and the officers of the Surviving Corporation shall be the persons who were officers of Respironics immediately prior to the Effective Time, each such person to hold, in accordance with the Bylaws and at the pleasure of the Board of Directors of the Surviving Corporation, the same office or offices with the Surviving Corporation as he or she then held with Respironics.

8. **Termination and Amendment.** This Agreement may be terminated by the Board of Directors of either Respironics or BAI at any time prior to the Effective Time. In addition, the Boards of Directors of Respironics and BAI may amend this Agreement at any time prior to the Effective Time.

9. **Miscellaneous.** At the Effective Time, all the property, rights, privileges, franchises, patents, trademarks, licenses, registrations and other assets of every kind and description of BAI shall be transferred to, vested in and devolve upon Respironics without further act or deed and all property, rights, and every other interest of Respironics and BAI shall be as effectively the property of Respironics as they were of Respironics and BAI, respectively. BAI hereby agrees from time to time, as and when requested by Respironics or by its successors or assigns, to execute and deliver or cause to be executed and delivered all such deeds and instruments and to take or cause to be taken such further or other action as Respironics may deem necessary or desirable in order to vest in and confirm to Respironics title to and possession of any property of BAI acquired or to be acquired by reason of or as a result of the Merger herein provided for and otherwise to carry out the intent and purposes hereof and the proper officers and directors of BAI and the proper officers and directors of Respironics are fully authorized in the name of BAI or otherwise to take any and all such action.

IN WITNESS WHEREOF, Respironics and BAI have caused this Agreement to be executed as of the date first above written.

RESPIRONICS, INC.

By: Donald Spence  
Name: Donald J. Spence  
Title: President

BENNER & ASSOCIATES, INC.

By: D. J. Benner  
Name: Daniel J. Belevino  
Title: Vice President