

Division of Corporations

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P00000000297

Florida Department of State

Division of Corporations

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Katherine Harris, Secretary of State

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BASIC AMENDMENT

OPENCLOSE.COM, INC.

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Certificate of Status	0
Certified Copy	1
Page Count	20
Estimated Charge	\$43.75

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Amendment

6-18-01

6/18/2001

DC



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

June 18, 2001

OPENCLOSE.COM, INC.
1401 NW 136TH AVE., #302
SUNRISE, FL 33323US

SUBJECT: OPENCLOSE.COM, INC.
REF: P00000000297

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

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Darlene Connell
Corporate Specialist

FAX Aud. #: H01000074380
Letter Number: 101A00037034

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ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION

of

OPENCLOSE.COM, INC.

DESIGNATING THE PREFERENCES, RIGHTS AND
LIMITATIONS OF

SERIES B PREFERRED STOCK
\$0.01 PAR VALUE

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Pursuant to Section 607.0602 of the Florida Business Corporation Act

The undersigned, Robert Sullivan, the President of Openclose.com, Inc., a Florida corporation (the "Corporation"),

DOES HEREBY CERTIFY:

That, pursuant to the authority expressly conferred upon the Board of Directors by Section 4.2 of the Articles of Incorporation, as amended, of the Corporation (the "Articles of Incorporation") in accordance with the provisions of Section 607.0602 of the Florida Business Corporation Act, the Board of Directors, by Unanimous Written Consent dated November 16, 2000, duly adopted a resolution providing for the issue of a series of the Company's preferred stock to be designated Series B Preferred Stock, \$0.01 par value. The resolution was approved by the shareholders of the Corporation by Action by Written Consent dated November 16, 2000.

That, by Unanimous Written Consent dated June 15, 2001, the Board of Directors of the Corporation duly adopted the following resolution amending and restating the November 16, 2000 resolution described above. The below resolution was approved by the shareholders of the Corporation by Action by Written Consent dated June 15, 2001.

"RESOLVED, that pursuant to the authority expressly granted to the Company's Board of Directors by Section 4.2 of the Articles of Incorporation, the Board of Directors hereby establishes a series of the Company's preferred stock, \$0.01 par value per share, and hereby fixes the designation, the number of shares and the relative rights, preferences and limitations thereof as follows:

1. Designation.

A total of twenty-five million (25,000,000) shares of the Corporation's Preferred Stock shall be designated the "Series B Preferred Stock."

2. Dividends.

(a) Computation of Cumulative Dividends. The holders of the outstanding shares of Series B Preferred Stock shall be entitled to receive, out of any funds legally available therefor, cumulative dividends at the annual rate of \$0.016 per share of Series B Preferred Stock. Dividends on the Series B Preferred Stock shall accrue from day to day on each share of Series B Preferred Stock from the date of original issuance of such share, whether or not earned or declared, and shall accrue until paid if, as and when declared by the Board of Directors of the Corporation, or upon liquidation, dissolution or winding up of the Corporation pursuant to Section 3 hereof, upon conversion pursuant to Section 5 hereof or upon redemption pursuant to Section 6 hereof.

All numbers relating to calculation of cumulative dividends shall be subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Series B Preferred Stock. Such dividends on the Series B Preferred Stock shall be cumulative so that if such dividends in respect of any previous or current annual dividend period, at the annual rate specified above, shall not have been paid or declared and a sum sufficient for the payment thereof set apart, the deficiency shall first be fully paid before any dividend or other distribution shall be paid or declared and set apart for the Corporation's Common Stock, \$0.01 par value per share (the "Common Stock") or any other class or series of capital stock of the Corporation designated in the future to be junior to the Series B Preferred Stock; provided, however, that the Corporation's Series A Preferred Stock, \$0.01 par value (the "Series A Preferred Stock" and, collectively with the Series B Preferred Stock, the "Preferred Stock"), shall participate in all dividends on a pari passu basis with the Series B Preferred Stock. Upon the conversion of all shares of the Series B Preferred Stock under Section 5(e)(i)(A) hereof or upon the conversion of any shares of Series B Preferred Stock in anticipation of a liquidation, dissolution or winding up of the Corporation pursuant to Section 3 hereof or a Qualified Public Offering, all such accrued and unpaid cumulative dividends on such shares of Series B Preferred Stock to and until the date of such conversion shall be canceled and shall not be due and payable.

(b) Restrictions on Distributions. Except as otherwise consented to by the holders of at least a majority of the then outstanding shares of Preferred Stock (voting as a separate class), the Corporation shall not declare or pay any dividends, or purchase, redeem, retire, or otherwise acquire for value any shares of its capital stock (or any rights, options or warrants to purchase such shares) now or hereafter outstanding, return any capital to its stockholders as such, or make any distribution of assets to its stockholders as such, or permit any subsidiary of the Corporation to do any of the foregoing.

Notwithstanding the foregoing, subsidiaries of the Corporation may declare and make payment of cash and stock dividends, return capital and make distributions of assets to the Corporation, and nothing herein contained shall prevent the Corporation from (i) effecting a stock split or declaring or paying any dividend consisting of shares of any class of capital stock paid to the holders of shares of such class of capital stock; or (ii) complying with any specific provision of the terms of the Series B Preferred Stock as set forth herein (including, without limitation, redemption of the Series B Preferred Stock in accordance with its terms).

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(c) Participating Dividends. In the event that the Board of Directors of the Corporation shall declare a dividend payable upon the then outstanding shares of Common Stock (other than a stock dividend on the Common Stock distributed solely in the form of additional shares of Common Stock), each holder of shares of Series B Preferred Stock shall be entitled to the amount of dividends as would be declared payable on the largest number of whole shares of Common Stock into which the shares of Series B Preferred Stock held by such holder could be converted pursuant to the provisions of Section 5 hereof, such number determined as of the record date for the determination of holders of Common Stock entitled to receive such dividend.

3. Liquidation, Dissolution or Winding Up.

In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or in the event of its insolvency, before any distribution or payment is made to any holders of Common Stock or any other class or series of capital stock of the Corporation designated to be junior to the Series B Preferred Stock and subject to the liquidation rights and preferences of any class or series of preferred stock designated in the future to be senior to, or on a parity with, the Series B Preferred Stock with respect to liquidation preferences, it being understood that the Series A Preferred Stock shall participate in the proceeds of any such liquidation, dissolution or winding up of the Corporation on a pari passu basis with the Series B Preferred Stock, the holders of each share of Series B Preferred Stock shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock of all classes whether such assets are capital, surplus or earnings ("Available Assets"), an amount equal to the sum of:

(a) \$0.16 per share of Series B Preferred Stock, plus all accrued but unpaid dividends thereon, whether or not earned or declared up to and including the date full payment shall be tendered to the holders of the Series B Preferred Stock with respect to such liquidation, dissolution or winding up; plus

(b) an amount equal to such amount per share of Series B Preferred Stock as would have been payable (after reducing the Available Assets by the distribution provided for in (a) above) had each share of Series B Preferred Stock, and all other outstanding shares of any class or series of capital stock of the Corporation, if any, which are convertible into Common Stock and which are senior to the Common Stock with respect to liquidation preferences, been converted to Common Stock immediately prior to such event of liquidation, dissolution or winding up.

The amounts set forth above and throughout this Section 3 shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Series B Preferred Stock.

If, upon liquidation, dissolution or winding up of the Corporation, the Available Assets shall be insufficient to pay the holders of Preferred Stock the full amount to which they otherwise would be entitled to receive, the holders of Preferred Stock shall share ratably in any distribution of Available Assets pro rata in proportion to the respective liquidation preference amounts to

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which they would otherwise be entitled to receive upon liquidation if all liquidation preference dollar amounts owing to the holders of Preferred Stock were paid in full.

After such payment in clause (a) above shall have been made in full to the holders of the Series B Preferred Stock or funds necessary for such payment shall have been set aside by the Corporation in trust for the account of holders of the Series B Preferred Stock so as to be available for such payment and the corresponding applicable amount has been paid or set aside with respect to the Series A Preferred Stock, the remaining assets available for distribution shall be distributed ratably among the holders of the Preferred Stock, the Common Stock and any classes of stock designated to be junior to the Series B Preferred Stock, if any.

If at any time or from time to time there shall be a capital reorganization of the Common Stock, or a merger or consolidation of the Corporation with or into another corporation unless the Corporation shall be the surviving corporation, or the sale of all or substantially all of the Corporation's capital stock or assets to any other person or entity, or any other form of business combination or reorganization in which Control of the Corporation is transferred (a "Reorganization"), such Reorganization shall be regarded as a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Section 3; provided, however, that each holder of Series B Preferred Stock shall have the right to elect the benefits of the provisions of Section 5(a) hereof in lieu of receiving payment in liquidation, dissolution or winding up of the Corporation pursuant to this Section 3. "Control" shall be deemed to have been transferred in a transaction or series of transactions in which any person, or group of related persons, shall have acquired beneficial ownership of more than 50% of the Common Stock of the Corporation (assuming all rights, options, warrants or convertible or exchangeable securities entitling the holders thereof to subscribe for or purchase or otherwise acquire shares of Common Stock ("Common Stock Equivalents") have been fully exercised or converted) or of substantially all of the assets of the Corporation.

Whenever the distribution provided for in this Section 3 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation. All distributions (including distributions other than cash) made hereunder shall be made pro rata with respect to each share of Preferred Stock in accordance with the liquidation preference amounts described in Section 3 above. In the event of any dispute between the holders of the Preferred Stock and the Corporation regarding the determination of the fair market value of non-cash distributions, at the election of the holders of at least a majority of the then outstanding shares of Preferred Stock (voting as a separate class), the Corporation shall engage a consulting or investment banking firm selected by the Board of Directors and approved by the holders of at least a majority of the then outstanding shares of Preferred Stock (voting as a separate class) to prepare an independent appraisal of the fair market value of such property to be distributed. The expenses of any appraisal by such consulting or investment banking firm shall be borne by the Corporation.

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4. Voting Power.

Except as otherwise expressly provided in this Section 4, or as otherwise required by law, each holder of Series B Preferred Stock shall be entitled to vote on all matters and shall be entitled to that number of votes equal to the largest number of whole shares of Voting Common Stock into which such holder's shares of Series B Preferred Stock could be converted, pursuant to the provisions of Section 5 hereof, at the record date for the determination of stockholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise expressly provided herein or as otherwise required by law or under the Articles of Incorporation, the holders of shares of Preferred Stock and Common Stock shall vote together (or render written consents in lieu of a vote) as a single class on all matters submitted to the stockholders of the Corporation, except that the Nonvoting Common Stock shall not be entitled to vote in the election of directors.

The holders of Preferred Stock (voting as a separate class) shall be entitled to elect three (3) directors (all such directors shall be collectively referred to herein as the "Preferred Stock Directors").

Any Preferred Stock Director may be removed during his or her term of office, without cause, by and only by, the affirmative vote or written consent of the holders of Preferred Stock (voting as a separate class). A vacancy in a seat held by any Preferred Stock Director shall be filled by vote or written consent of the holders of Preferred Stock (voting as a separate class) or by written consent.

Without the written consent of the holders of at least a majority of the then outstanding shares of Preferred Stock (voting as a separate class), the number of directors of the Corporation shall not exceed 7 in number.

5. **Conversion Rights.** The holders of the Series B Preferred Stock shall have the following rights with respect to the conversion of such shares into shares of Voting Common Stock:

(a) **General.** Subject to and in compliance with the provisions of this Section 5, all shares of the Series B Preferred Stock may, at the option of any holder, be converted at any time and from time to time into fully-paid and non-assessable shares of Voting Common Stock. The number of shares of Voting Common Stock to which a holder of Series B Preferred Stock shall be entitled to receive upon conversion shall be the product obtained by multiplying the Applicable Conversion Rate (determined as provided in Section 5(b)) by the number of shares of Series B Preferred Stock being converted at any time.

(b) **Applicable Conversion Rate.** The conversion rate in effect at any time for the Series A Preferred Stock (the "Applicable Conversion Rate") shall be the quotient obtained by dividing 0.16 by the Applicable Conversion Value, calculated as provided in Section 5(c).

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(c) Applicable Conversion Value. The Applicable Conversion Value in effect from time to time, except as adjusted in accordance with Section 5(d) hereof, shall be \$0.16 (the "Applicable Conversion Value").

(d) Adjustments to Applicable Conversion Value of Series B Preferred Stock.

(i)(A) Upon Dilutive Issuances of Common Stock or Convertible Securities. If the Corporation shall, while there are any shares of Series B Preferred Stock outstanding, issue or sell shares of its Common Stock or Common Stock Equivalents (as defined in Section 3(b)) without consideration or at a price per share less than the Applicable Conversion Value in effect immediately prior to such issuance or sale (a "Diluting Issue"), then in each such case such Applicable Conversion Value, except as hereinafter provided, shall be lowered so as to be equal to an amount determined by multiplying such Applicable Conversion Value by a fraction:

(1) the numerator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock or Common Stock Equivalents (calculated on a fully-diluted basis assuming the conversion of all then presently exercisable options, warrants, purchase rights or convertible securities whose exercise or conversion price is less than the Applicable Conversion Value then in effect), plus (b) the number of shares of Common Stock or Common Stock Equivalents which the net aggregate consideration, if any, received by the Corporation for the total number of such additional shares of Common Stock or Common Stock Equivalents so issued in such Diluting Issue would purchase at the Applicable Conversion Value in effect immediately prior to such issuance, and

(2) the denominator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock or Common Stock Equivalents (calculated on a fully-diluted basis assuming the exercise or conversion of all then presently exercisable options, warrants, purchase right or convertible securities whose exercise or conversion price is less than the Applicable Conversion Value then in effect), plus (b) the number of such additional shares of Common Stock or Common Stock Equivalents so issued in such Diluting Issue.

The provisions of the foregoing paragraph as they may apply to the Series B Preferred Stock may be waived in any instance (without the necessity of convening any meeting of stockholders of the Corporation) upon the written agreement of at least a majority of the then outstanding shares of Series B Preferred Stock (voting as a separate class).

(i)(B) Upon Dilutive Issuances of Warrants, Options and Purchase Rights to Common Stock or Convertible Securities.

(1) For the purposes of this Section 5(d)(i), the issuance of any Common Stock Equivalent shall be deemed an issuance of Common Stock with respect to adjustments in the Applicable Conversion Value if the Net Consideration Per Share (as hereinafter determined) which may be received by the Corporation for such Common Stock shall be less than the Applicable Conversion Value in effect at the time of such issuance. Any obligation, agreement or undertaking to issue Common Stock Equivalents at any time in the future shall be deemed to be an issuance at the time such obligation, agreement or undertaking is made or arises. No adjustment of the Applicable Conversion Value shall be made under this Section 5(d)(i) upon the issuance of any shares of Common Stock which are issued pursuant to the exercise, conversion or exchange of any Common Stock Equivalents if any adjustment shall previously have been made upon the issuance of any such Common Stock Equivalents as above provided.

(2) Adjustments for Cancellation or Expiration of Common Stock Equivalents. Should the Net Consideration Per Share of any such Common Stock Equivalents be decreased or increased from time to time, then, upon the effectiveness of each such change, the Applicable Conversion Value will be that which would have been obtained (x) had the adjustments made upon the issuance of such Common Stock Equivalents been made upon the basis of the actual Net Consideration Per Share of such securities, and (y) had the adjustments made to the Applicable Conversion Value since the date of issuance of such Common Stock Equivalents been made to such Applicable Conversion Value as adjusted pursuant to clause (x) above. Any adjustment of the Applicable Conversion Value with respect to this Section 5(d)(i) which relates to any Common Stock Equivalent shall be disregarded if, as, and when such Common Stock Equivalent expires or is canceled without being exercised, or is repurchased by the Corporation at a price per share at or less than the original purchase price, so that the Applicable Conversion Value effective immediately upon such cancellation or expiration shall be equal to the Applicable Conversion Value that would have been in effect had the expired or canceled Common Stock Equivalent not been issued.

(3) Net Consideration Per Share. For purposes of this paragraph, the "Net Consideration Per Share" which may be received by the Corporation shall be determined as follows:

(a) The "Net Consideration Per Share" shall mean the amount equal to the total amount of consideration, if any, received by the Corporation for the issuance of such Common Stock Equivalents, plus the minimum amount of consideration, if any, payable to the Corporation upon exercise, or conversion or exchange thereof, divided by the aggregate number of shares of Common Stock that would be issued if all such Common Stock Equivalents were exercised, exchanged or converted.

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(b) The "Net Consideration Per Share" which may be received by the Corporation shall be determined in each instance as of the date of issuance of Common Stock Equivalents without giving effect to any possible future upward price adjustments or rate adjustments which may be applicable with respect to such Common Stock Equivalents.

(i)(C) Stock Dividends for Holders of Capital Stock Other Than Common Stock. In the event that the Corporation shall make or issue, or shall fix a record date for the determination of holders of any capital stock of the Corporation other than holders of Common Stock entitled to receive a dividend or other distribution payable in Common Stock or securities of the Corporation convertible into or otherwise exchangeable for shares of Common Stock of the Corporation, then such Common Stock or other securities issued in payment of such dividend shall be deemed to have been issued for no consideration, except for (1) dividends payable in shares of Common Stock payable pro rata to holders of Series B Preferred Stock and to holders of any other class of stock (whether or not paid to holders of any other class of stock), or (2) with respect to the Series B Preferred Stock, dividends payable in shares of Series B Preferred Stock; provided, however, that holders of any shares of Series B Preferred Stock shall be entitled to receive in lieu of such Series B Preferred Stock the shares of Voting Common Stock for which the shares of Series B Preferred Stock are then convertible.

(i)(D) Consideration Other than Cash. For purposes of this Section 5(d)(i), if a part or all of the consideration received by the Corporation in connection with the issuance of shares of the Common Stock or the issuance of any of the securities described in this Section 5(d)(i) consists of property other than cash, such consideration shall be deemed to have a fair market value as is reasonably determined in good faith by the Board of Directors of the Corporation. In the event of any dispute between the holders of the Series B Preferred Stock and the Corporation regarding the determination of fair market value, on the request of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock (voting as a separate class), the Corporation shall engage a consulting firm or investment banking firm, selected by the Board of Directors and approved by the holders of at least a majority of the outstanding shares of Series B Preferred Stock (voting as a separate class), to prepare an independent appraisal of the fair market value of such property to be distributed. The expenses of any appraisal by such consulting or investment banking firm shall be borne by the Corporation.

(i)(E) Exceptions to Anti-dilution Adjustments. This Section 5(d)(i) shall not apply with respect to (a) any of the circumstances which would constitute an Extraordinary Common Stock Event (as described below); (b) shares of Common Stock, or options exercisable therefor, issued or to be issued under an incentive stock option plan of the Corporation approved by a majority of the Preferred Stock Directors, and any additional shares required to be issued thereunder to adjust for any stock split, stock dividend or combination of Common Stock; (c) shares of Common Stock issuable upon conversion of the Preferred Stock and (d) shares of Voting Common Stock issuable upon conversion of the Nonvoting Common Stock.

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(i)(F) Additional Stock Purchase Requirement. This Section 5(d)(i) shall cease to apply to all shares of Series B Preferred Stock held by a particular holder who, at the time of a Diluting Issue does not purchase its pro-rata share (determined on the basis of its proportional interest in the Corporation based on the number of shares of Common Stock held by such holder (including for purposes of such determination the number of shares of Common Stock issuable upon conversion of the Series B Preferred Stock or conversion or exercise of other Common Stock Equivalents)) of such Diluting Issue (the "Additional Stock Purchase Requirement"). The Additional Stock Purchase Requirement shall apply only with respect to Diluting Issues in which the holders of Series B Preferred Stock are afforded the right to participate to the extent of their respective Additional Stock Purchase Requirements and do not waive their right to participate at the request of the Corporation. The adjustment provided in this Section 5(d)(i) shall not be made with respect to such shares either in the case of the Diluting Issue in which such holder fails to satisfy the Additional Stock Purchase Requirement or any subsequent Diluting Issue occurring after such holder has failed to satisfy the Additional Stock Purchase Requirement (without regard to who owns such shares at such time). Any holder of a share of Series B Preferred Stock shall be entitled, at any time upon written request to the Corporation, to receive a statement from the Corporation setting forth the Applicable Conversion Value then in effect with respect to such shares and stating whether or not such shares would be entitled to adjustment of such Applicable Conversion Value under this Section 5(d)(i) in the event of a subsequent Diluting Issue.

(ii) Upon Extraordinary Common Stock Event. Upon the happening of an Extraordinary Common Stock Event (as hereinafter defined), the Applicable Conversion Value (and all other conversion values set forth in Section 5(d)(i) above) shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the Applicable Conversion Value by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock Event, and the product so obtained shall thereafter be the Applicable Conversion Value. The Applicable Conversion Value, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Extraordinary Common Stock Event or Events.

An "Extraordinary Common Stock Event" shall mean (i) the issue of additional shares of Voting or Nonvoting Common Stock as a dividend or other distribution on outstanding shares of Voting or Nonvoting Common Stock, respectively, (ii) a subdivision of outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination or reverse stock split of outstanding shares of Common Stock into a smaller number of shares of the Common Stock.

(e) Automatic Conversion Upon Qualified Public Offering or Election of Series B Preferred Stock.

(i) Immediately upon (A) the closing of an underwritten public offering on a firm commitment basis pursuant to an effective registration statement filed pursuant to the Securities Act of 1933, as amended, covering the offer and sale of shares of Common Stock for the account of the Corporation in which the aggregate price paid for such shares by the public is equal to or greater than \$20,000,000 and in which the price per share of Common Stock paid by the public equals or exceeds 300% of the then Applicable Conversion Value for the Series C Preferred Stock (a "Qualified Public Offering"), or (B) the approval, set forth in a written notice to the Corporation and all record holders of Series B Preferred Stock, of the holders of at least 50% of the outstanding shares of Series B Preferred Stock of an election to convert Series B Preferred Stock into Common Stock, then all outstanding shares of Series B Preferred Stock shall be converted automatically into the number of shares of Common Stock into which such shares of Series B Preferred Stock are then convertible pursuant to Section 5 hereof as of the closing and consummation of such underwritten public offering, or the stated date of approval of such holders of Series B Preferred Stock, 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.

(ii) Surrender of Certificates Upon Automatic Conversion. Upon the occurrence of the conversion event specified in the immediately preceding subparagraph (i), the holders of the Series B Preferred Stock shall, upon notice from the Corporation, surrender the certificates representing such shares at the office of the Corporation or of its transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder a certificate or certificates for the number of shares of Common Stock into which the shares of Series B Preferred Stock so surrendered were convertible on the date on which such conversion occurred. The Corporation shall not be obligated to issue such certificates unless certificates evidencing the shares of Series B Preferred Stock being converted are either delivered to the Corporation or any such transfer agent, or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith.

(f) Dividends. In the event the Corporation shall make or issue, or shall fix a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution (other than a distribution in liquidation or other distribution otherwise provided for herein) with respect to the Common Stock payable in (i) securities of the Corporation other than shares of Common Stock, or (ii) other assets (excluding cash dividends or distributions), and to the extent that the provisions of Section 2(c) hereof are waived or are inapplicable, then and in each such event provision shall be made so that the holders of the Series B Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities or such other assets of the Corporation which they would have received had their Series B Preferred Stock been converted into Voting 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 Conversion Date (as that term is hereafter defined in Section 5(i)), retained such securities or such other assets receivable by them during such period, giving application to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Series B Preferred Stock.

(g) Capital Reorganization or Reclassification. If the Voting Common Stock issuable upon the conversion of the Series B Preferred Stock shall be changed into the same or different number of shares of any class or classes of capital stock, whether by capital reorganization, recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 5, or the sale of all or substantially all of the Corporation's capital stock or assets to any other person), then and in each such event the holders of the Series B Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of capital stock and other securities and property receivable upon such reorganization, recapitalization, reclassification or other change by the holders of the number of shares of Common Stock into which such shares of Series B Preferred Stock might have been converted immediately prior to such reorganization, recapitalization, reclassification or change, all subject to further adjustment as provided herein.

(h) Certificate as to Adjustments: Notice by Corporation. In each case of an adjustment or readjustment of the Applicable Conversion Rate, the Corporation at its expense will furnish each holder of Series B Preferred Stock so affected with a certificate prepared by the Treasurer or Chief Financial Officer of the Corporation, showing such adjustment or readjustment, and stating in detail the facts upon which such adjustment or readjustment is based. Within 90 days of the end of each fiscal year of the Corporation, the Corporation at its expense will furnish each holder of Series B Preferred Stock so affected with a certificate prepared by the independent public accountants to the Corporation, showing such adjustment or readjustment, and stating in detail the facts upon which such adjustment or readjustment is based.

(i) Exercise of Conversion Privilege. To exercise its conversion privilege, a holder of Series B Preferred Stock shall surrender the certificate or certificates representing the shares being converted to the Corporation at its principal office, and shall give written notice to the Corporation at that office that such holder elects to convert such shares. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series B Preferred Stock surrendered for conversion shall be accompanied by proper assignment thereof to the Corporation or in blank. The date when such written notice is received by the Corporation, together with the certificate or certificates representing the shares of Series B Preferred Stock being converted, shall be the "Conversion Date". As promptly as practicable after the Conversion Date, the Corporation shall issue and shall deliver to the holder of the shares of Series B Preferred Stock being converted, or on its written order, such certificate or certificates as it may request for the number of whole shares of Common Stock issuable upon the conversion of such shares of Series B Preferred Stock in accordance with the provisions of this Section 5, and cash, as provided in Section 5(j), in respect of any fraction of a share of Common Stock issuable upon such conversion. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date, and at such time the rights of the holder as holder of the converted shares of

Series B Preferred Stock shall cease and the person(s) in whose name(s) any certificate(s) 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.

(j) Cash in Lieu of Fractional Shares. No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon the conversion of shares of Series B Preferred Stock. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of Series B Preferred Stock, the Corporation shall pay to the holder of the shares of Series B Preferred Stock which were converted a cash adjustment in respect of such fractional shares in an amount equal to the same fraction of the fair market value per share of the Common Stock (as determined in a reasonable manner prescribed by the Board of Directors) at the close of business on the Conversion Date. The determination as to whether or not any fractional shares are issuable shall be based upon the aggregate number of shares of Series B Preferred Stock being converted at any one time by any holder thereof, not upon each share of Series B Preferred Stock being converted.

(k) Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Voting Common Stock, solely for the purpose of effecting the conversion of the shares of the Series B Preferred Stock, 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 B Preferred Stock (including any shares of Series B Preferred Stock represented by any warrants, options, subscription or purchase rights for Series B Preferred Stock), and if at any time the number of authorized but unissued shares of Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock (including any shares of Series B Preferred Stock represented by any warrants, options, subscriptions or purchase rights for such Series B Preferred Stock), the Corporation shall take such action as may be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purpose.

(l) No Reissuance of Series B Preferred Stock. No share or shares of Series B Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue. Upon any of the foregoing events, the Corporation shall from time to time take such appropriate corporate action as may be necessary to reduce the authorized number of shares of the Series B Preferred Stock.

6. Redemption.

(a) Redemption. At the prior written request of the holders of at least a majority of the then outstanding shares of Preferred Stock, given no later than 90 days prior to a Redemption Date (as defined below), the Corporation may redeem on the Redemption Date specified in such written request, at any time on or after January 31, 2005, January 31, 2006 and January 31, 2007 (each a "Redemption Date") the percentage of shares of Preferred Stock specified in such written request; provided that the Series A Preferred Stock shall participate in any such redemption on a pari passu basis with the Series B Preferred Stock and the aggregate percentage of shares of Preferred Stock to be redeemed by the Corporation, including all shares of Preferred Stock redeemed prior thereto pursuant to this Section 6, shall not exceed the following percentages of the shares of Preferred Stock:

<u>Earliest Redemption Date</u>	<u>Percentage of Preferred Stock (on a cumulative basis) Which May Be Redeemed</u>
January 31, 2005	33%
January 31, 2006	67%
January 31, 2007	100%

(b) Series B Redemption Price; Payment. The redemption price for each share of Series B Preferred Stock redeemed pursuant to this Section 6 shall be \$0.16 per share of Series B Preferred Stock, plus all accrued but unpaid dividends thereon, whether or not earned or declared up to and including the applicable Redemption Date (the "Redemption Price"). The Corporation shall pay the Redemption Price on such Redemption Date in cash.

(c) Equitable Adjustment. The Redemption Price set forth in this Section 6 shall be subject to equitable adjustment whenever there shall occur a stock split, stock dividend, combination, recapitalization, reclassification or other similar event involving a change in the Series B Preferred Stock.

(d) Redemption Notice. If the Corporation has received from the holders of the Preferred Stock, the written notice set forth in Section 6(a) above, at least 45 days prior to the Redemption Date to which such written notice relates, written notice (hereinafter referred to as the "Redemption Notice") may be mailed, certified mail, return receipt requested, by the Corporation to each holder of record of Preferred Stock which is 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 the remedies of the holders of Preferred Stock set forth in Section 6(h). The Redemption Notice shall contain the following information:

(i) the number of shares of Preferred Stock held by such holder which such holder may elect to have redeemed pursuant to its option under this Section 6;

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

(iii) that the holder is to surrender to the Corporation, at the places and times designated therein, its certificate or certificates representing the shares of Preferred Stock to be redeemed.

(e) Surrender of Certificates. Each holder of shares of Series B Preferred Stock to be redeemed shall surrender the certificate(s) representing such shares to the Corporation at the places and times designated in the Redemption Notice, and thereupon the Redemption Price 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.

(f) Dividends and Conversion after Redemption. Each share to be redeemed shall retain all of the rights and privileges of the Series B Preferred Stock until such share is actually redeemed in cash, including, without limitation, the dividend rights of Section 2 herein, the liquidation preferences of Section 3 herein, the conversion rights of Section 5 herein and the voting rights of Section 4 and Section 7 herein.

(g) Insufficient Funds. If the funds of the Corporation legally available for redemption of the Preferred Stock on the Redemption Date are insufficient to redeem the number of shares of Preferred Stock to be so redeemed on such date, the holders of shares of Preferred Stock shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable with respect to the number of shares owned by them if the shares to be so redeemed on such date were redeemed in full. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein.

(h) Failure to Redeem. In the event the Corporation has chosen to not redeem any shares of Preferred Stock in accordance with this Section 6 on any Redemption Date (each a "Redemption Failure"), the holders of at least a majority of the then outstanding shares of Preferred Stock (voting as a separate class) may elect in writing to have the Applicable Conversion Value of the unredeemed shares of Preferred Stock requested to be redeemed on such Redemption Date lowered as of the Determination Date (as hereinafter defined) and on each anniversary thereof by an amount equal to product of the Applicable Conversion Value in effect at such time multiplied by .20. Within 30 days of such election (a "Determination Date"), the Corporation shall either (a) pay the Redemption Price in cash on such Determination Date, (b) consent in writing to the lowering of the Applicable Conversion Value effective on such Determination Date or (c) agree to use its best efforts to solicit proposals for a sale of the business of the Corporation at a price acceptable to the holders of Preferred Stock. The Corporation shall solicit proposals for the sale of the business of the Corporation, and shall within 30 days of such Determination Date, at its expense, retain an investment banking firm of national reputation, approved in writing by the holders of at least a majority of the then outstanding shares of Preferred Stock (voting as a separate class) to assist it in such efforts. The Corporation shall provide prompt written notice to the holders of the Preferred Stock of each proposal received by it specifying the terms of such proposal in reasonable detail subject to receipt of their written agreement to maintain such proposal as confidential and not to disclose the same without the written consent of the Corporation. If the Corporation receives written

notice from the holders of at least a majority of the then outstanding shares of Preferred Stock (voting as a separate class) or if the Corporation shall have received an offer to sell the business of the Corporation for a price per share of Common Stock (assuming conversion of all Common Stock Equivalents), equal to 300% of the Applicable Conversion Value (prior to the adjustments provided in this Section 6(h)), the Corporation shall take all appropriate action and use its best efforts to consummate the sale of the business of the Corporation in accordance with such proposal. Notwithstanding the Corporation's efforts to sell, if the sale of the business of the Corporation does not occur within 6 months of such Determination Date, then the Applicable Conversion Value shall be lowered in accordance with this subsection effective on such Determination Date. It is understood, however, that the Corporation's obligations pursuant to this subsection shall cease and terminate if the Corporation shall have made all requested payments in full and otherwise redeemed all shares of Preferred Stock requested to be redeemed. This Section 6(h) shall constitute the exclusive remedy of the holders of the Preferred Stock in connection with a Redemption Failure.

(i) Duration. The rights of the holders of the Series B Preferred Stock under this Section 6 shall expire upon a Qualified Public Offering.

7. Restrictions and Limitations.

The Corporation shall not take any corporate action or otherwise amend its Articles of Incorporation or Bylaws without the approval by vote or written consent of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock (voting as a separate class), each share of Series B Preferred Stock to be entitled to one vote in each instance, if such corporate action or amendment would change any of the rights, preferences, privileges or limitations provided for herein for the benefit of any shares of Series B Preferred Stock or materially adversely affect the rights of the holders of the Series B Preferred Stock. Without limiting the generality of the preceding sentence, the Corporation will not amend its Articles of Incorporation or take any other corporate action without the approval of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting separately as a single class, if such amendment or corporate action would:

(a) cause or authorize the Corporation to redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose), any share or shares of equity securities of the Corporation other than as provided for in Section 2 or Section 6 hereof; or

(b) authorize, create or issue, or obligate the Corporation to authorize, create or issue, additional shares of any security senior to or on a parity with the Series B Preferred Stock; or

(c) reduce the amount payable to the holders of Series B Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; or

(d) adversely affect the liquidation preferences, dividend rights, voting rights or redemption rights of the holders of Series B Preferred Stock; or

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(e) cancel or modify the conversion rights of the holders of Series B Preferred Stock provided for in Section 5 herein; or

(f) provide for the voluntary liquidation, dissolution, recapitalization or winding up of the Corporation; or

(g) cause or authorize the Corporation to pay any dividend with respect to any class of stock ranking junior to or on a parity with the Series B Preferred Stock, other than any dividend consisting solely of shares of any class of capital stock paid to the holders of shares of such class of capital stock; or

(h) sell, transfer or encumber any assets (including mortgage loans) other than in the ordinary course of business, or as security for bank debt, or remarketing and sales of used equipment in excess of \$50,000; or

(i) cause or authorize, or obligate itself to cause to authorize, any Reorganization.

8. **No Dilution or Impairment.** The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of capital stock or assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Series B Preferred Stock set forth herein, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series B Preferred Stock against dilution or other impairment. Without limiting the generality of the foregoing, the Corporation (a) will not increase the par value of any shares of stock receivable on the conversion of the Series B Preferred Stock above the amount payable therefor on such conversion, and (b) will take all such action as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and nonassessable shares of stock on the conversion of all Series B Preferred Stock from time to time outstanding.

9. **Notices of Record Date.** In the event of

(a) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of capital stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation, or any transfer of all or substantially all of the assets of the Corporation to any other Corporation, or any other entity or person, or

(c) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation,

then and in each such event the Corporation shall mail or cause to be mailed to each holder of Series B Preferred Stock a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (iii) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up. Such notice shall be mailed by first class mail, postage prepaid, at least 20 days prior to the date specified in such notice on which such action is to be taken.

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IN WITNESS WHEREOF, Openclose.com, Inc. has caused this Amendment to be signed
by Robert Sullivan, its President and Chief Executive Officer, this 15th day of June, 2001.

OPENCLOSE.COM, INC.

By: 

Name: Robert Sullivan

Title: President and Chief Executive Officer

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