

**P06000083970**

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CHERRYROAD TECHNOLOGIES INC.**

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*Amended and Restated Act*

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December 26, 2012

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

CHERRYROAD TECHNOLOGIES INC.  
301 GIBRALTAR DRIVE  
SUITE 2C  
MORRIS PLAINS, NJ 07950

**RESUBMIT**  
Please give original  
submission date as file date.

SUBJECT: CHERRYROAD TECHNOLOGIES INC.  
REF: P06000083970

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.

A certificate must accompany the Restated Articles of Incorporation setting forth either of the following statements: (1) The restatement was adopted by the board of directors and does not contain any amendment requiring shareholder approval. OR (2) If the restatement contains an amendment requiring shareholder approval, the date of adoption of the amendment and a statement setting forth the following: (a) the number of votes cast for the amendment by the shareholders was sufficient for approval (b) If more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

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Tina Roberts  
Regulatory Specialist II

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TALLAHASSEE, FLORIDA

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
CHERRYROAD TECHNOLOGIES INC.**

(Pursuant to the Florida Business Corporation Act)

CherryRoad Technologies Inc., a corporation organized and existing under and by virtue of the provisions of the Florida Business Corporation Act (the "**Business Corporation Act**").

**DOES HEREBY CERTIFY:**

1. That the name of this corporation is CherryRoad Technologies Inc. and that this corporation was originally incorporated pursuant to the Business Corporation Act on June 20, 2006 under its current name.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Amended and Restated Articles of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

**RESOLVED**, that the Amended and Restated Articles of Incorporation of this corporation be amended and restated in its entirety to read as follows:

**FIRST:** Michael Gulban, whose address is 925 Lake Wyman Rd., Boca Raton, FL 33431, and Ann Marie Gulban, whose address is 925 Lake Wyman Rd., Boca Raton, FL 33431, originally incorporated the corporation pursuant to the Business Corporation Act on June 20, 2006 under its current name.

**SECOND:** The name of the corporation is CherryRoad Technologies Inc. (the "**Corporation**").

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the laws and statutes of the State of Florida.

**FOURTH:** The duration of the Corporation is perpetual.

**FIFTH:** The street address of the principal office of the Corporation in Florida is: 301 Yamato Road, Suite 4199, Boca Raton, FL 33431.

**SIXTH:** The name of the registered agent of the Corporation in Florida is: Michael Gulban whose address is 925 Lake Wyman Rd., Boca Raton, FL 33431.

**SEVENTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 1,000 shares of Common Stock, \$.001 par value per share ("**Common Stock**"), (ii) 100,000 shares of Non-Voting Common Stock, \$.001 par value per share ("**Non-Voting Common Stock**", and together with the Common Stock, the "**Voting/Non-Voting Common Stock**"), and (iii) 200 shares of Preferred Stock, \$.001 par value per share ("**Preferred Stock**").

Upon filing of this Second Amended and Restated Articles of Incorporation with the Secretary of State of the State of Florida, each holder of Common Stock of this Corporation (the "**Original Common Stock**") shall, without any action on the part of the holders thereof or the Corporation, be issued Ninety-Nine (99) shares of Non-Voting Common Stock for each share of Original Common Stock held by such stockholder (the "**Dividend**"). The Corporation shall issue to such stockholder a new stock certificate representing the newly issued Non-Voting Common Stock resulting from the Dividend.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. VOTING/NON-VOTING COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Voting/Non-Voting Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein. Except as otherwise specifically provided herein, each share of Voting/Non-Voting Common Stock shall be identical in all respects one with the other.

2. Voting. The holders of Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Second Amended and Restated Articles of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Second Amended and Restated Articles of Incorporation or pursuant to the Business Corporation Act. There shall be no cumulative voting. The holders of Non-Voting Common Stock shall not be entitled to vote at any meetings of stockholders (or written actions in lieu of meetings).

B. PREFERRED STOCK

All of the shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock**" with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to "Sections" or "Subsections" in this Part B of this Article Seventh refer to sections and subsections of Part B of this Article Seventh.

1. Dividends.

From and after the date of the issuance of any shares of Series A Preferred Stock, dividends at the rate per annum of 8% of the Series A Original Issue Price (as defined below) shall accrue from day to day and shall be cumulative (the "**Accruing Dividends**"). Accruing Dividends shall be paid annually to the holders of Series A Preferred Stock. The "**Series A Original Issue Price**" shall mean \$40,000 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Preferential Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Voting/Non-Voting Common Stock by reason of their ownership thereof, an amount per share equal to 100% of the Series A Original Issue Price, plus any unpaid Accruing Dividends as well as any other dividends declared but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "**Series A Liquidation Amount**"). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Payments to Holders of Voting/Non-Voting Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment in full of the Series A Liquidation Amount to the holders of shares of Series A Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Voting/Non-Voting Common Stock, pro rata based on the number of shares held by each such holder.

2.3 Deemed Liquidation Events.

2.3.1. Definition. Each of the following events shall be considered a "**Deemed Liquidation Event**" unless the holders of a majority of the outstanding shares of Series A Preferred Stock elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

- (a) a merger or consolidation in which
  - (i) the Corporation is a constituent party or

- (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

#### 2.3.2. Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "**Merger Agreement**") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the Business Corporation Act within 90 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Series A Preferred Stock, and (ii) if the holders of a majority of the then outstanding shares of Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders (the "**Available Proceeds**"), to the extent legally available therefor, on the 150th day after such Deemed Liquidation Event, to redeem all outstanding shares of Series A Preferred

Stock at a price per share equal to the Series A Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock the Corporation shall redeem a pro rata portion of each holder's shares of Series A Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Prior to the distribution or redemption provided for in this Subsection 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

2.3.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

2.3.4. Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Subsection 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the Merger Agreement shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

3. Voting. Except as expressly provided by law, the Series A Preferred Stock shall have no voting rights.

4. Waiver. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares of Series A Preferred Stock then outstanding.

5. Notices. Any notice required or permitted by the provisions of this Article Seventh to be given to a holder of shares of Series A Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the Business Corporation Act, and shall be deemed sent upon such mailing or electronic transmission.

**EIGHTH: Indemnification of Officers, Directors, Employees and Agents:** The Corporation shall indemnify any person who incurs expenses or liabilities by reason of the fact that he or she is or was an officer, director, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. This indemnification shall be mandatory in all circumstances in which indemnification is permitted by the laws or statutes of Florida.

**NINTH: Limitation of Liability:** To the fullest extent permitted by the laws or statutes of Florida, as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for any action taken or any failure to take any action as a director. No repeal, amendment or modification of this article, whether direct or indirect, shall eliminate or reduce its effect with respect to any act or omission of a director of the Corporation occurring prior to such repeal, amendment or modification.

\* \* \*

3. That the foregoing amendment and restatement was approved by the shareholders of this corporation on December 21, 2012 in accordance with the Business Corporation Act and each voting group entitled to vote separately on said amendment and restatement and the number of votes cast for said amendment and restatement by the shareholders in each voting group was sufficient for approval by that voting group.

4. That this Second Amended and Restated Articles of Incorporation, which restates and integrates and further amends the provisions of this Corporation's Amended and Restated Articles of Incorporation, has been duly adopted in accordance with the Business Corporation Act.

*[Signature Page Follows]*



**IN WITNESS WHEREOF**, this Second Amended and Restated Articles of Incorporation has been executed by a duly authorized officer of this corporation on this 24th day of December, 2012.

CHERRYROAD TECHNOLOGIES INC.

By: Nancy H. Rogerson  
Name: Nancy H. Rogerson  
Title: VP - CFO