

P94000058890

Florida Department of State
Division of Corporations
Public Access System
Katherine Harris, Secretary of State

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H00000032943 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations
Fax Number : (850) 922-4000

From: Account Name : FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL & BANKER, P.A.
Account Number : 075410001562
Phone : (813) 228-7411
Fax Number : (813) 228-9401

BASIC AMENDMENT

VITALCAST.COM, INC.

FILED
00 JUN 20 PM 2:42
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECEIVED
00 JUN 20 PM 12:47
DIVISION OF CORPORATIONS

Certificate of Status	0
Certified Copy	1
Page Count	09
Estimated Charge	\$43.75

Amendment

Electronic Filing Menu

Corporate Filing

Public Access Help

06-20-00

DC

**SECOND AMENDMENT TO
THE ARTICLES OF INCORPORATION OF
VITALCAST.COM, INC.**

FILED
00 JUN 20 PM 2:42
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

WHEREAS, the Restated Articles of Incorporation of VITALCAST.COM, INC., a Florida corporation (the "Articles of Incorporation"), were filed with and approved by the Secretary of State of the State of Florida on the 8th day of March, 1999; and

WHEREAS, the First Amendment to Articles of Incorporation of VITALCAST.COM, INC. were filed with and approved by the Secretary of State of the State of Florida on the 14th day of April, 1999; and

WHEREAS, pursuant to the provisions of Florida Statutes, Section 607.0602, in the Articles of Incorporation, the shareholders have granted the directors the authority to issue Serial Preferred Stock without further shareholder approval; and

WHEREAS, it is the intention of all of the directors of VITALCAST.COM, INC. that the Articles of Incorporation be amended in accordance with the proposed amendment hereinafter set forth; and

WHEREAS, the proposed amendment to the Articles of Incorporation hereinafter set forth was approved by all of the directors of VITALCAST.COM, INC. pursuant to the provisions of Florida Statutes, Section 607.0602, on the 17th day of May, 2000; and

WHEREAS, the approval of the Secretary of State of the State of Florida of the proposed amendment hereinafter set forth is hereby requested.

NOW, THEREFORE, BE IT RESOLVED, the Articles of Incorporation are hereby amended by deleting in its entirety the present Article 3, Section A, and by substituting therefor the following, to-wit:

"A. Authorized Capitalization. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 70,000,000 shares, divided into the following: (i) 1,200,000 shares of Series A Convertible Preferred Stock, \$.001 par value (the "Series A Preferred Stock"), (ii) 920,000 shares of Series B Preferred Stock, \$.001 par value (the "Series B Preferred Stock"), (iii) 800,000 shares of Series C Preferred Stock, \$.001 par value (the "Series C Preferred Stock"), (iv) 17,080,000 shares of undesignated Serial Preferred Stock, \$.001 par value, and (v) 50,000,000 shares of Common Stock, \$.001 par value."

FURTHER RESOLVED, the Articles of Incorporation are hereby amended by inserting the following to Article 3, to-wit:

"D. Series B Preferred Stock. The rights, preferences, privileges and restrictions granted to or imposed upon the Series B Preferred Stock are as follows:

1. Dividends. No dividends shall be paid on the Series A Preferred Stock or the common stock until the cumulative dividends and other distributions to holders of the Series B Preferred Stock is equal to \$2.00 per share plus a preferred return equal to 12% per annum (the "Series B Liquidation Preference"). Thereafter, the Series B Preferred Stock shall not be entitled when, as and if declared by the Board of Directors of the Company to share in any ordinary or special dividends or distributions paid out of the retained earnings or capital surplus of the Company to the holders of shares of common stock or Series A Preferred Stock. The right to dividends on shares of common stock, Series A Preferred Stock or Series B Preferred Stock shall not be cumulative and no right shall accrue to holders of common stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock by reason of the fact that dividends on such shares are not declared in any period. Subject to the rights of the holders of the Series C Preferred Stock set forth herein and any other series of serial preferred stock authorized pursuant to the terms of Part B of Article 3, the holders of common stock, Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive dividends out of the retained earnings of the capital surplus of the Company when, as and if decided by the Board of Directors.

2. Liquidation Preference. In the event of the liquidation, dissolution or winding up of the Company, whether voluntarily or involuntarily, the holders of Series B Preferred Stock then outstanding shall be entitled to receive, after payment or provision for payment of all creditors of the Company, but before any distributions or payments shall be made in respect of the common stock, Series A Preferred Stock or any other stock of the Company ranking junior to the Series B Preferred Stock as to assets on liquidation, dissolution or winding up an amount equal to the Series B Liquidation Preference less any dividends previously received, and no payment on account of liquidation, dissolution or winding up shall be made to the holders of any series of preferred stock which is junior to the Series B Preferred Stock (including the Series A Preferred Stock) or any other stock of the Company ranking junior to the Series B Preferred Stock as to assets until the Series B Liquidation Preference has been paid. After payment of the Series B Liquidation Preference, the holders of the Series B Preferred Stock shall have no rights in respect of the remaining assets of the Company.

3. Merger or Sale. At the option of the holder, the consolidation or the merger of the Company with or into any other company or corporation or the sale or transfer by the Company of all or substantially all of its assets may be deemed to be a liquidation, dissolution or winding up of the Company for purposes of this Article 3 or in the alternative, the holder may elect to convert the Series B Preferred Stock into common stock as provided in paragraph 5, provided that such election shall not be available if in the merger, consolidation or other reorganization transaction, stockholders of the

Company immediately prior to such transaction own a majority of the aggregate voting power of the surviving corporation after the transaction shall have been consummated.

4. Voting Rights. The Series B Preferred Stock shall be entitled to one (1) vote per share of Series B Preferred Stock on each matter to be voted upon by the shareholders of the Corporation. The holder of each share of Series B Preferred Stock shall be entitled to receive notice of any shareholders meeting in accordance with the bylaws of the Corporation and shall vote with holders of the common stock upon the election of directors and upon any other matters submitted to a vote of the shareholders, except those matters required by law to be submitted to a class vote. Fractional voting rights shall be rounded to the nearest whole number (with one half rounded upward to one).

5. Conversion. The holders of the Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) *Rights of Conversion.* Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share and prior to the adoption of a resolution by the Board of Directors to liquidate the Company or the election by the holder to treat a merger, consolidation or sale of assets as a liquidation under paragraph 3 above. Upon conversion, each share of Series B Preferred Stock shall be convertible into one share of common stock, adjusted for stock dividends, stock splits and recapitalizations occurring after the date hereof (the "Conversion Rate").

(b) *Automatic Conversion.* Each share of Series B Preferred Stock shall automatically be converted into shares of common stock at the then-effective Conversion Rate immediately upon the earlier to occur of (i) the effectiveness of a registration statement under the Securities Act of 1933, as amended, relating to a bona fide, firm commitment underwriting of the Corporation's common stock, or (ii) the Corporation or a successor to the Corporation becoming registered under the Securities Exchange Act of 1934.

(c) *Deposit of Certificates.* Before any holder of Series B Preferred Stock shall be entitled to convert the same into common stock, the holder shall surrender the certificate or certificates for that Series B Preferred Stock at the office of the transfer agent for the common stock, which certificate or certificates, if the Corporation shall so request, shall be duly endorsed to the Corporation or in blank or accompanied by proper instruments of transfer to the Company or

in blank, and shall give written notice to the Company at that office that the holder elects so to convert Series B Preferred Stock, and shall state in writing in that notice the name or names in which he or she wishes the certificate or certificates for common stock to be issued. Every such notice of election to convert shall constitute a contract between the holder of the Series B Preferred Stock and the Company, by which the holder of the Series B Preferred Stock shall be deemed to subscribe for the amount of common stock which he or she shall be entitled to receive upon the conversion, and, in satisfaction of that subscription, to deposit the Series B Preferred Stock to be converted and to release the Company from all liability under that stock, and thereby the Company shall be deemed to agree that the surrender of the certificate or certificates for the Series B Preferred Stock and the release of liability on that stock shall constitute full payment of the subscription for common stock to be issued upon that conversion.

(d) *Issuance of Certificates.* As soon as practicable after the above-described deposit of certificates for Series B Preferred Stock accompanied by the written notice and the statement above prescribed, the Company will issue and deliver at the office of the transfer agent to the person for whose account the Series B Preferred stock was so surrendered, or to his or her nominee or nominees, certificates for the number of full shares of common stock to which that person shall be entitled as described above, together with a cash adjustment of any fraction of a share as stated in these Articles, if not evenly convertible. Subject to the following provisions of this paragraph, the conversion shall be deemed to have been made as of the date of surrender of the Series B Preferred Stock to be converted; and the person or persons entitled to receive the common stock issuable upon conversion of that Series B Preferred Stock shall be treated for all purposes as the record holder or holders of that common stock on that date. The Company shall not be required to convert, and no surrender of Series B Preferred Stock shall be effective for that purpose, while the stock transfer books of the Company are closed for any purpose; but the surrender of Series B Preferred Stock for conversion during any period while the books are so closed shall become effective for conversion immediately upon the re-opening of the books, as if the conversion had been made on the date the Series B Preferred Stock was surrendered.

(e) *Status.* Shares of Series B Preferred Stock converted into common stock shall be cancelled and the number of shares of undesignated serial preferred stock which the Company shall have authority to issue shall be increased by the conversion and cancellation of such shares.

(f) *Reservation.* The Company shall at all times reserve and keep available, out of its authorized and unissued common stock, solely for the purpose of effecting the conversion of the Series B Preferred Stock, such number of shares as shall from time to time be sufficient to effect the conversion of all shares of Series B Preferred Stock from time to time outstanding. The Company shall from time to time, in accordance with the laws of Florida, increase the authorized amount of its common stock if at any time the number of shares of common stock remaining unissued shall not be sufficient to permit the conversion of all the then outstanding Series B Preferred Stock.

(g) *Fractional Shares.* No fractions of shares of common stock will be issued upon conversion. In the event that because of any adjustments required to be made fractions of shares of common stock would be required to be issued upon conversion, the Company will, in lieu of issuing the fractions of shares, pay to the person otherwise entitled to the fractions the cash value of the fractions based upon the current market price (as reasonably determined by the Company) per share of common stock on the day prior to that on which shares of Series B Preferred Stock are surrendered by that person for conversion.

E. Series C Preferred Stock. The rights, preferences, privileges and restrictions granted to or imposed upon the Series C Preferred Stock are as follows:

1. Dividends. No dividends shall be paid on the Series A Preferred Stock or Series B Preferred Stock or the common stock until the cumulative dividends and other distributions to holders of the Series C Preferred Stock is equal to \$2.00 per share plus a preferred return equal to 12% per annum (the "Series C Liquidation Preference"). Thereafter, the Series C Preferred Stock shall not be entitled when, as and if declared by the Board of Directors of the Company to share in any ordinary or special dividends or distributions paid out of the retained earnings or capital surplus of the Company to the holders of shares of common stock, Series A Preferred Stock or Series B Preferred Stock. The right to dividends on shares of common stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall not be cumulative and no right shall accrue to holders of common stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock by reason of the fact that dividends on such shares are not declared in any period. Subject to the rights of the holders of the Series C Preferred Stock set forth herein and any other series of serial preferred stock authorized pursuant to the terms of Part B of Article 3, the holders of common stock, Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive dividends out of the retained earnings of the

capital surplus of the Company when, as and if decided by the Board of Directors.

2. Liquidation Preference. In the event of the liquidation, dissolution or winding up of the Company, whether voluntarily or involuntarily, the holders of Series C Preferred Stock then outstanding shall be entitled to receive, after payment or provision for payment of all creditors of the Company, but before any distributions or payments shall be made in respect of the common stock, Series A Preferred Stock or Series B Preferred Stock or any other stock of the Company ranking junior to the Series C Preferred Stock as to assets on liquidation, dissolution or winding up an amount equal to the Series C Liquidation Preference less any dividends previously received, and no payment on account of liquidation, dissolution or winding up shall be made to the holders of any series of preferred stock which is junior to the Series C Preferred Stock (including the Series A Preferred Stock and the Series B Preferred Stock) or any other stock of the Company ranking junior to the Series C Preferred Stock as to assets until the Series C Liquidation Preference has been paid. After payment of the Series C Liquidation Preference, the holders of the Series C Preferred Stock shall have no rights in respect of the remaining assets of the Company.

3. Merger. At the option of the holder of Series C Preferred Stock, the consolidation or the merger of the Company with or into any other company or corporation or the sale or transfer by the Company of all or substantially all of its assets shall be deemed to be a liquidation, dissolution or winding up of the Company for purposes of this Article 3, or in the alternative, the holder may elect to convert the Series C Preferred Stock into common stock as provided in paragraph 5, provided that such election shall not be available if in the merger, consolidation or other reorganization transaction, stockholders of the Company immediately prior to such transaction own a majority of the aggregate voting power of the surviving corporation after the transaction shall have been consummated.

4. Voting Rights. The Series C Preferred Stock shall be entitled to one (1) vote per share of Series C Preferred Stock on each matter to be voted upon by the shareholders of the Corporation. The holder of each share of Series C Preferred Stock shall be entitled to receive notice of any shareholders meeting in accordance with the bylaws of the Corporation and shall vote with holders of the common stock upon the election of directors and upon any other matters submitted to a vote of the shareholders, except those matters required by law to be submitted to a class vote. Fractional voting rights shall be rounded to the nearest whole number (with one half rounded upward to one). No new series of preferred stock of the Corporation which will have rights equal to or superior to the Series C Preferred Stock shall be designated by the Board of the Corporation without the approval of the majority in interest of the then outstanding holders of Series C Preferred

Stock.

5. Conversion. The holders of the Series C Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) *Rights of Conversion*. Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share and prior to the adoption of a resolution by the Board of Directors to liquidate the Company or the election by the holder to treat a merger, consolidation or sale of assets as a liquidation under paragraph 3 above. Upon conversion, each share of Series C Preferred Stock shall be convertible into one share of common stock, adjusted for stock dividends, stock splits and recapitalizations occurring after the date hereof (the "Conversion Rate").

(b) *Automatic Conversion*. Each share of Series C Preferred Stock shall automatically be converted into shares of common stock at the then-effective Conversion Rate immediately upon the earlier to occur of (i) the effectiveness of a registration statement under the Securities Act of 1933, as amended, relating to a bona fide, firm commitment underwriting of the Corporation's common stock, or (ii) the Corporation or a successor to the Corporation becoming registered under the Securities Exchange Act of 1934.

(c) *Deposit of Certificates*. Before any holder of Series C Preferred Stock shall be entitled to convert the same into common stock, the holder shall surrender the certificate or certificates for that Series C Preferred Stock at the office of the transfer agent for the common stock, which certificate or certificates, if the Corporation shall so request, shall be duly endorsed to the Corporation or in blank or accompanied by proper instruments of transfer to the Company or in blank, and shall give written notice to the Company at that office that the holder elects so to convert Series C Preferred Stock, and shall state in writing in that notice the name or names in which he or she wishes the certificate or certificates for common stock to be issued. Every such notice of election to convert shall constitute a contract between the holder of the Series C Preferred Stock and the Company, by which the holder of the Series C Preferred Stock shall be deemed to subscribe for the amount of common stock which he or she shall be entitled to receive upon the conversion, and, in satisfaction of that subscription, to deposit the Series C Preferred Stock to be converted and to release the Company from all liability under that stock, and thereby the Company shall be deemed to agree that the surrender of the certificate or certificates for the Series C Preferred Stock and the

release of liability on that stock shall constitute full payment of the subscription for common stock to be issued upon that conversion.

(d) *Issuance of Certificates.* As soon as practicable after the above-described deposit of certificates for Series C Preferred Stock accompanied by the written notice and the statement above prescribed, the Company will issue and deliver at the office of the transfer agent to the person for whose account the Series C Preferred stock was so surrendered, or to his or her nominee or nominees, certificates for the number of full shares of common stock to which that person shall be entitled as described above, together with a cash adjustment of any fraction of a share as stated in these Articles, if not evenly convertible. Subject to the following provisions of this paragraph, the conversion shall be deemed to have been made as of the date of surrender of the Series C Preferred Stock to be converted; and the person or persons entitled to receive the common stock issuable upon conversion of that Series C Preferred Stock shall be treated for all purposes as the record holder or holders of that common stock on that date. The Company shall not be required to convert, and no surrender of Series C Preferred Stock shall be effective for that purpose, while the stock transfer books of the Company are closed for any purpose; but the surrender of Series C Preferred Stock for conversion during any period while the books are so closed shall become effective for conversion immediately upon the re-opening of the books, as if the conversion had been made on the date the Series C Preferred Stock was surrendered.

(e) *Status.* Shares of Series C Preferred Stock converted into common stock shall be cancelled and the number of shares of undesignated serial preferred stock which the Company shall have authority to issue shall be increased by the conversion and cancellation of such shares.

(f) *Reservation.* The Company shall at all times reserve and keep available, out of its authorized and unissued common stock, solely for the purpose of effecting the conversion of the Series C Preferred Stock, such number of shares as shall from time to time be sufficient to effect the conversion of all shares of Series C Preferred Stock from time to time outstanding. The Company shall from time to time, in accordance with the laws of Florida, increase the authorized amount of its common stock if at any time the number of shares of common stock remaining unissued shall not be sufficient to permit the conversion of all the then outstanding Series C Preferred Stock.

Fax Audit No.: H00000032943
Page 9 of 9

(g) *Fractional Shares.* No fractions of shares of common stock will be issued upon conversion. In the event that because of any adjustments required to be made fractions of shares of common stock would be required to be issued upon conversion, the Company will, in lieu of issuing the fractions of shares, pay to the person otherwise entitled to the fractions the cash value of the fractions based upon the current market price (as reasonably determined by the Company) per share of common stock on the day prior to that on which shares of Series C Preferred Stock are surrendered by that person for conversion."

IN WITNESS WHEREOF, this Second Amendment to Articles of Incorporation is hereby executed on this 20th day of June, 2000.

VITALCAST.COM, INC.

By: 

Name: KCCRMCHY

Title: CEO

H:\MWH\Docs\0212.wpd