

07/15/2002

13:31

CCRS → 2050380

NO.531

D01

Division of Corporations

## 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.

(((H02000166248 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) 205-0380

## From:

Account Name : CORPORATE & CRIMINAL RESEARCH SERVICES  
Account Number : 110450000714  
Phone : (850) 222-1173  
Fax Number : (850) 224-1640

FILED  
02 JUL 15 PM 3:56  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

## BASIC AMENDMENT

OPENNETWORK TECHNOLOGIES, INC.

Certificate of Status	0
Certified Copy	1
Page Count	30
Estimated Charge	\$43.75

Restated  
KES  
7-15  
30

FROM

H02000166248

NO. 142 D02  
02 JUL 15 PM 3:56  
FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLES OF RESTATEMENT  
OF  
OPENNETWORK TECHNOLOGIES, INC.**

To the Department of State of the State of Florida

Pursuant to the provisions of the Florida Business Corporation Act, the corporation hereinafter named (the "Corporation") does hereby amend and restate its Articles of Incorporation (as heretofore amended and restated).

1. The name of the Corporation is OPENNETWORK TECHNOLOGIES, INC. (Florida Document No. P94000066072).

2. The text of the Restated Articles of Incorporation of the Corporation, as amended hereby, is annexed hereto and made a part hereof.

\* \* \* \* \*  
It is hereby certified that:

1. The annexed restatement (Restated Articles of Incorporation) contains amendments to the Articles of Incorporation of the Corporation requiring shareholder approval.

2. The Articles of Incorporation of the Corporation, as previously amended and restated, are hereby amended and restated by deleting them in their entirety and inserting in lieu thereof the Restated Articles of Incorporation annexed hereto and made a part hereof, so as henceforth to read in their entirety as set forth in such Restated Articles of Incorporation.

3. The date of adoption of the aforesaid amendments and restatement was July 15, 2002. The Restated Articles of Incorporation were approved by the unanimous vote of the Board of Directors of the Corporation.

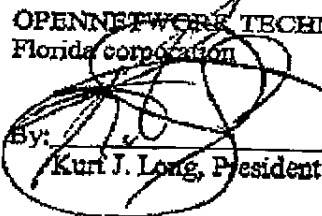
4. Four voting groups of shareholders were entitled to vote on the said amendments and restatement.

5. The number of votes cast for the said amendments and restatement by each of the said voting groups of shareholders was sufficient for the approval thereof.

6. The effective time and date of these Articles of Restatement and the Restated Articles of Incorporation shall be upon filing hereof with the Florida Department of State.

Executed on July 15, 2002.

OPENNETWORK TECHNOLOGIES, INC., a  
Florida corporation

By:   
Kurt J. Long, President

07/15/2002

13:31

CCRS - 2050380

NO. 531

D02

FROM

H02000166248

**RESTATED ARTICLES OF INCORPORATION  
OF  
OPENNETWORK TECHNOLOGIES, INC.**

For the purposes of restating the Articles of Incorporation of OpenNetwork Technologies, Inc., a corporation formed on September 8, 1994 under Chapter 607 of the laws of the State of Florida, the undersigned submits these Restated Articles of Incorporation to read in their entirety as follows:

**ARTICLE 1  
Name and Address**

The name of this Corporation is: OPENNETWORK TECHNOLOGIES, INC. The mailing and street address of the Corporation is: 13577 Feather Sound Drive, Suite 390, Clearwater, Florida 33762.

**ARTICLE 2  
Term of Existence**

This Corporation shall have perpetual existence, commencing upon the date of filing of the original Articles of Incorporation with the Florida Department of State.

**ARTICLE 3  
Purpose**

This Corporation is organized for the purpose of transacting any and all lawful business.

**ARTICLE 4  
Powers**

The Corporation shall have the power:

- (a) To have perpetual succession by its corporate name.
- (b) To sue and be sued, complain and defend in its corporate name in all actions or proceedings.
- (c) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed, affixed or in any other manner reproduced.

FROM

H02000166248

(d) To purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property or any interest therein, wherever situated.

(e) To sell, convey, mortgage, pledge, create a security interest in, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(f) To lend money to and use its credit to assist its officers and employees to the full extent permitted by law.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(h) To make contracts and guaranties and incur liabilities, borrow money at such rates of interest as the Corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(j) To conduct its business, carry on its operations and have offices and exercise the powers granted by the Florida Business Corporation Act within or without the State of Florida.

(k) To elect or appoint officers and agents of the Corporation and define their duties and fix their compensation.

(l) To make and alter bylaws, not inconsistent with these Restated Articles of Incorporation and the laws of this State, for the administration and regulation of the affairs of the Corporation.

(m) To make donations for the public welfare or for charitable, scientific or educational purposes.

(n) To transact any lawful business which the Board of Directors shall find will be in aid of governmental policy.

(o) To pay pensions and establish and carry out pension plans, profit sharing plans, stock bonus plans, stock option plans, retirement plans, benefit plans and other incentive and compensation plans for any or all of its directors, officers and employees and for any or all of the directors, officers and employees of its subsidiaries.

FROM

H02000166248

(p) To provide insurance for its benefit on the life of any of its directors, officers or employees, or on the life of any shareholder for the purpose of acquiring at his death shares of its stock owned by the shareholder or by the spouse or children of the shareholder.

(q) To be a promoter, incorporator, general partner, limited partner, member, associate or manager of any corporation, partnership, limited partnership, joint venture, trust or other enterprise.

(r) To have and exercise all powers necessary or convenient to effect its purposes.

#### ARTICLE 5 Capital Stock

(a) This Corporation is authorized to issue:

(i) 55,000,000 shares of \$.001 par value common stock, which shall be designated "Common Stock".

(ii) 1,944,300 shares of \$.001 par value Series A Convertible Preferred Stock, having the rights, preferences, limitations and entitlements described hereinbelow.

(iii) 12,500,000 shares of \$.001 par value Series B Convertible Preferred Stock, having the rights, preferences, limitations and entitlements described hereinbelow.

(iv) 1,750,000 shares of \$.001 par value Series C Convertible Preferred Stock, having the rights, preferences, limitations and entitlements described hereinbelow.

(v) 20,000,000 shares of \$.001 par value Series D Convertible Preferred Stock, having the rights, preferences, limitations and entitlements described hereinbelow.

#### (b) EXPRESS TERMS OF PREFERRED STOCK

1. Number of Shares. The series of Preferred Stock designated and known as "Series A Convertible Preferred Stock" shall consist of 1,944,300 shares, the series of Preferred Stock designated and known as "Series B Convertible Preferred Stock" shall consist of 12,500,000 shares, the series of Preferred Stock designated and known as "Series C Convertible Preferred Stock" shall consist of 1,750,000 shares, and the series of Preferred Stock designated as "Series D Convertible Preferred Stock" shall consist of 20,000,000 shares. The Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock and the Series D Convertible Preferred Stock are together herein referred to as the "Preferred Stock."

FROM

F02000166248

## 2. Voting.

**2A. General.** Except as may be otherwise provided in these terms of the Preferred Stock or by law, the Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation, including, but not limited to actions amending the Restated Articles of Incorporation of the Corporation to increase the number of authorized shares of Common Stock. Each share of Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible.

**2B. Board Size.** The Corporation shall not, without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Preferred Stock (such majority to be determined on the basis of the number of shares of Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible), given in writing or by vote at a meeting, increase the maximum number of directors constituting the Board of Directors to a number in excess of nine (9).

**2C. Board Seats.** The holders of the Series A Convertible Preferred Stock, voting as a separate series, shall be entitled to elect one (1) director of the Corporation (the "Series A Director"). The holders of the Series B Convertible Preferred Stock, voting as a separate series, shall be entitled to elect three (3) directors of the Corporation (the "Series B Directors"). The holders of Series D Convertible Preferred Stock, voting as a separate series, shall be entitled to elect two (2) directors of the Corporation (the "Series D Directors") and together with the Series A Directors and Series B Directors, the "Preferred Stock Directors"). The holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect two (2) directors of the Corporation (the "Common and Preferred Directors"). and the holders of Common Stock and Series A Convertible Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect one (1) director of the Corporation (the "Series A and Common Director"). Notwithstanding the foregoing or anything else to the contrary provided in these Restated Articles of Incorporation, if the Corporation fails or refuses, for any reason or for no reason, to (i) pay Series B Dividends or Series D Dividends (as defined in subparagraphs 3C and 3E) within fifteen days of any scheduled quarterly payment date, or (ii) redeem on a Redemption Date (as defined in subparagraph 8A) all of the then outstanding shares of Preferred Stock requested to then be redeemed in accordance with the terms and provisions of paragraph 8 of this Article V(b), the holders of the Preferred Stock shall have the rights and remedies provided in paragraph 10 of this Article V(b). At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of a series of Preferred Stock then outstanding shall constitute a quorum of such series of Preferred Stock for the election of directors to be elected solely by the holders of such series of Preferred Stock.

FROM

H02000166248

**2D. Vacancies and Removal.** Each Preferred Stock Director shall serve until his successor is elected and qualified or until his earlier resignation or removal. Each Preferred Stock Director may be removed during his term of office, without cause, only by the affirmative vote or written consent of the holders of a majority of the outstanding shares of the related series of Preferred Stock. Any vacancy in the office of a Preferred Stock Director may be filled only by the vote or written consent of the holders of a majority of the outstanding shares of the related series of Preferred Stock.

**2E. Director Indemnification.** In the event that any director elected pursuant to these Restated Articles of Incorporation shall be made or threatened to be made a party to any action, suit or proceeding with respect to which he may be entitled to indemnification by the Corporation pursuant to its Restated Articles of Incorporation or otherwise, he shall be entitled to be represented in such action, suit or proceeding by counsel of his choice (who shall be approved by the Corporation, which approval may not be unreasonably withheld) and the expenses of such representation shall be reimbursed by the Corporation to the extent provided in or authorized by said Restated Articles of Incorporation or other provision. No shareholder shall take any action to amend any provision of the Restated Articles of Incorporation relating to indemnification of directors, as presently in effect, without the prior written consent of the holders of a majority of the Preferred Stock (such majority to be determined on the basis of the number of shares of Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible). Any designee of any shareholder who shall serve as a member of the Corporation's Board of Directors shall have full authority to exercise his discretion and business judgment to perform his duty as director and shall incur no special obligation or liability to any party hereto as a result of such exercise. No shareholder shall have any claim against any such designee, or the party or parties who selected such designee, with regard to such selection.

### **3. Dividends.**

**3A. Preferred Stock Dividends.** The holders of the Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends at the same rate as dividends (other than dividends paid in additional shares of Common Stock) are paid with respect to the Common Stock (treating each share of Preferred Stock as being equal to the number of shares of Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible).

**3B. Series A Dividends.** In addition to any dividend payable pursuant to subparagraph 3A, the holders of the Series A Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation, out of assets of the Corporation legally available therefor, cumulative dividends on the Series A Convertible Preferred Stock at the rate of \$.020573 per share per quarter (the "Series A Dividends"). Such dividends shall accrue, whether or not declared and paid, and shall be cumulative.

**3C. Series B Dividends.** Prior and in preference to the declaration or payment of any dividend or distribution on any other class or series of capital stock of the

H02000166248

FROM

H02000166248

Corporation (other than Series D Convertible Preferred Stock), including the Series A Dividends and Series C Dividends, and in addition to any dividend payable pursuant to subparagraph 3A, the holders of the Series B Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation, out of assets of the Corporation legally available therefor, cumulative dividends on the Series B Convertible Preferred Stock at the rate of \$.039499 per share per quarter (the "Series B Dividends"). Such dividends shall accrue, whether or not declared and paid, and shall be cumulative.

**3D. Series C Dividends.** In addition to any dividend payable pursuant to subparagraph 3A, the holders of the Series C Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation, out of assets of the Corporation legally available therefor, cumulative dividends on the Series C Convertible Preferred Stock at the rate of \$.039499 per share per quarter (the "Series C Dividends"). Such dividends shall accrue, whether or not declared and paid, and shall be cumulative.

**3E. Series D Dividends.** Prior and in preference to the declaration or payment of any dividend or distribution on any other class or series of capital stock of the Corporation, including the Series A Dividends, Series B Dividends and Series C Dividends, and in addition to any dividend payable pursuant to subparagraph 3A, the holders of the Series D Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation, out of assets of the Corporation legally available therefor, cumulative dividends on the Series D Convertible Preferred Stock at the rate of \$.013388 per share per quarter (the "Series D Dividends"). Such dividends shall accrue, whether or not declared and paid, and shall be cumulative.

**3F. Series A Dividend, Series B Dividend, Series C Dividend and Series D Dividend Payment Mechanics.** For the first two years following the first date any shares of the Series A Convertible Preferred Stock are issued, the Series A Dividends shall be payable in shares of Series C Convertible Preferred Stock. Following such two year period, the Series A Dividends shall be payable in cash in U.S. dollars or in additional shares of Series C Convertible Preferred Stock, at the option of the Corporation. For the first two years following the first date any shares of the Series B Convertible Preferred Stock are issued, the Series B Dividends shall be payable in additional shares of Series B Convertible Preferred Stock. Following such two year period, the Series B Dividends shall be payable in cash in U.S. dollars or in additional shares of Series B Convertible Preferred Stock, at the option of the Corporation. For the first two years following the first date any shares of the Series A Convertible Preferred Stock are issued, the Series C Dividends shall be payable in additional shares of Series C Convertible Preferred Stock. Following such two year period, the Series C Dividends shall be payable in cash in U.S. dollars or in additional shares of Series C Convertible Preferred Stock, at the option of the Corporation. For the first two years following the first date any shares of Series D Convertible Preferred Stock are issued, the Series D Dividends shall be payable in additional shares of Series D Convertible Preferred Stock. Following such two year period, the Series D Dividends shall be payable in cash in U.S. Dollars or in additional shares of Series D Convertible Preferred Stock, at the option of the Corporation. Whether the Series A Dividends, Series B Dividends, Series C

H02000166248



FROM

H02000166248

Dividends or Series D Dividends will be paid in cash or in shares of the applicable series of Preferred Stock shall be determined by the vote of a majority of the Directors, excluding the Preferred Stock Directors. The Series A Dividends, Series B Dividends, Series C Dividends and Series D Dividends shall be calculated from and including issuance, but not prior to the original date of issuance, on the basis of a 365-day year, and shall accrue and be due and payable quarterly on each March 31, June 30, September 30 and December 31. For purposes of determining the number of shares of Preferred Stock payable in lieu of cash under this subparagraph 3F, each share of Series B Convertible Preferred Stock or Series C Convertible Preferred Stock, as the case may be, shall be valued at \$1.974964 per share, and each share of Series D Convertible Preferred Stock shall be valued at \$0.669388 per share. In the event any Preferred Stock is outstanding for less than an entire quarter for which payment is due, the Series A Dividends, Series B Dividends, Series C Dividends or Series D Dividends, as applicable, for such Preferred Stock shall be multiplied by a fraction equal to the actual number of days lapsed from and including issuance or most recent payment, divided by the actual number of days in the quarter.

4. Liquidation.

4A. Series D Convertible Preferred Stock Upon Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Series D Convertible Preferred Stock shall be entitled, before any distribution or payment is made upon the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock, or Common Stock or any other stock ranking junior to the Series D Convertible Preferred Stock, to be paid an amount equal to the greater of (i) \$0.669388 per share plus any dividends accrued but unpaid thereon, computed to the date payment thereof is made available, or (ii) such amount per share as would have been payable had each such share been converted to Common Stock pursuant to paragraph 7 of this Article V(b) immediately prior to such liquidation, dissolution or winding up, and the holders of Series D Convertible Preferred Stock shall not be entitled to any further payment or any further rights, such amount payable with respect to one share of Series D Convertible Preferred Stock being sometimes referred to as the "Series D Liquidation Preference Payment" and with respect to all shares of Series D Convertible Preferred Stock being sometimes referred to as the "Series D Liquidation Preference Payments." If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series D Convertible Preferred Stock shall be insufficient to permit payment to the holders of Series D Convertible Preferred Stock of the amount distributable as aforesaid, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series D Convertible Preferred Stock.

4B. Series B Convertible Preferred Stock Upon Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after the holders of Series D Convertible Preferred Stock shall have been paid in full the amounts to which they shall be entitled, the holders of the shares of Series B Convertible Preferred Stock shall be entitled, before any distribution or payment is made upon the Series A Convertible

H02000166248

FROM

H02000166248

Preferred Stock, Series C Convertible Preferred Stock, or Common Stock or any other stock ranking junior to the Series B Convertible Preferred Stock, to be paid an amount equal to the greater of (i) \$1.974964 per share plus any dividends accrued but unpaid thereon, computed to the date payment thereof is made available, or (ii) such amount per share as would have been payable had each such share been converted to Common Stock pursuant to paragraph 7 of this Article V(b) immediately prior to such liquidation, dissolution or winding up, and the holders of Series B Convertible Preferred Stock shall not be entitled to any further payment or any further rights, such amount payable with respect to one share of Series B Convertible Preferred Stock being sometimes referred to as the "Series B Liquidation Preference Payment" and with respect to all shares of Series B Convertible Preferred Stock being sometimes referred to as the "Series B Liquidation Preference Payments." If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series B Convertible Preferred Stock shall be insufficient to permit payment to the holders of Series B Convertible Preferred Stock of the amount distributable as aforesaid, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series B Convertible Preferred Stock.

**4C. Series A Convertible Preferred Stock And Series C Convertible Preferred Stock Upon Liquidation.** Upon any such liquidation, dissolution or winding up of the Corporation, after the holders of Series B Convertible Preferred Stock and Series D Preferred Stock shall have been paid in full the amounts to which they shall be entitled, the holders of the shares of Series A Convertible Preferred Stock and Series C Convertible Preferred Stock shall be entitled, before any distribution or payment is made upon the Common Stock or any other stock ranking junior to the Series A Convertible Preferred Stock and Series C Convertible Preferred Stock, to be paid an amount equal to the greater of (i) in the case of Series A Convertible Preferred Stock, \$1.028648 per share plus any dividends accrued but unpaid thereon, computed to the date payment thereof is made available, or in the case of Series C Convertible Preferred Stock, \$1.974964 per share plus any dividends accrued but unpaid thereon, computed to the date payment thereof is made available, or (ii) such amount per share as would have been payable had each such share of Series A Convertible Preferred Stock or Series C Convertible Preferred Stock, as the case may be, been converted to Common Stock pursuant to paragraph 7 of this Article V(b) immediately prior to such liquidation, dissolution or winding up, and the holders of Series A Convertible Preferred Stock and Series C Convertible Preferred Stock shall not be entitled to any further payment or any further rights, such amount payable with respect to one share of Series A Convertible Preferred Stock being sometimes referred to as the "Series A Liquidation Preference Payment" and with respect to all shares of Series A Convertible Preferred Stock being sometimes referred to as the "Series A Liquidation Preference Payments," and such amount payable with respect to one share of Series C Convertible Preferred Stock being sometimes referred to as the "Series C Liquidation Preference Payment" and with respect to all shares of Series C Convertible Preferred Stock being sometimes referred to as the "Series C Liquidation Preference Payments," and together with the Series A Liquidation Preference Payments, the Series B Liquidation Preference Payments and the Series D Liquidation Preference Payments, the "Liquidation Preference Payments." If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be

H02000166248

FROM

H02000166248

distributed among the holders of Series A Convertible Preferred Stock and Series C Convertible Preferred Stock shall be insufficient to permit payment to the holders of Series A Convertible Preferred Stock and Series C Convertible Preferred Stock of the amount distributable as aforesaid, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series A Convertible Preferred Stock and Series C Convertible Preferred Stock based on the relative amounts to which they would otherwise respectively be entitled.

**4D. Common Stock Upon Liquidation.** Upon any such liquidation, dissolution or winding up of the Corporation, after the holders of Preferred Stock shall have been paid in full the amounts to which they shall be entitled, the remaining net assets of the Corporation may be distributed to the holders of stock ranking on liquidation junior to the Preferred Stock.

**4E. Liquidation Procedure.** Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the Liquidation Preference Payments and the place where said Liquidation Preference Payments shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex, not less than 5 days prior to the payment date stated therein, to the holders of record of Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation. The consolidation or merger of the Corporation into or with any other entity or entities which results in the exchange of outstanding shares of the Corporation for securities or other consideration issued or paid or caused to be issued or paid by any such entity or affiliate thereof (other than a merger to reincorporate the Corporation in a different jurisdiction), and the sale, lease, abandonment, transfer or other disposition by the Corporation of all or substantially all its assets, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of the provisions of this paragraph 4. In connection with any such transaction contemplated by the preceding sentence, all consideration payable to the stockholders of the Corporation, in connection with a merger or consolidation, or all consideration payable to the Corporation, together with all other available assets of the Corporation (net of obligations owed by the Corporation), in the case of an asset sale, shall be paid to and deemed (to the fullest extent permitted by law) distributed (in the case of a merger or consolidation) or available for distribution and payment as provided herein (in the case of a sale of assets), as applicable, to the holders of capital stock of the Corporation in accordance with the preference and priorities set forth in this paragraph 4, with such preferences and priorities specifically intended to be applicable in any such merger, consolidation or sale transaction as if the same were a liquidation, dissolution or winding up. If applicable, the Corporation shall either (i) cause the agreement and plan of merger or consolidation to provide (as a consequence of such merger or consolidation) for the conversion of the Preferred Stock into the right to receive an amount of such consideration equal to the applicable amount payable under this paragraph 4; or (ii) immediately concurrent with the consummation of the sale of all or substantially all of the assets of the Corporation, cause the redemption of all outstanding shares of the Preferred Stock for an amount of such consideration equal to the applicable amount payable under this paragraph 4. In the event of the foregoing redemption, (i) the Corporation shall revalue its assets and liabilities to the fullest extent permitted by law to determine lawfully available funds for such

H02000166248

FROM

H02000166248

redemption, and (ii) if the Corporation shall not have such funds available to redeem all such shares, the Corporation shall redeem such shares to the fullest extent of available funds as the same became available. For purposes hereof, the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock and Common Stock shall rank on liquidation junior to the Series D Convertible Preferred Stock; the Series A Convertible Preferred Stock, Series C Convertible Preferred Stock and Common Stock shall rank on liquidation junior to the Series B Convertible Preferred Stock; and the Common Stock shall rank on liquidation junior to the Series A Convertible Preferred Stock and Series C Convertible Preferred Stock.

**5. Preferred Restrictions.** At any time when shares of Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by these Restated Articles of Incorporation, and in addition to any other vote required by law or these Restated Articles of Incorporation, without the approval of the holders of at least a majority of the then outstanding shares of Preferred Stock (such majority to be determined on the basis of the number of shares of Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible), given in writing or by vote at a meeting, the Corporation will not:

**5A.** Create or authorize the creation of any additional class or series of shares of stock unless the same ranks junior to Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation (including a deemed liquidation pursuant to subparagraph 4E hereof), or increase the authorized amount of the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock or Series D Convertible Preferred Stock or increase the authorized amount of any additional class or series of shares of stock unless the same ranks junior to the Series A Convertible Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation (including a deemed liquidation pursuant to subparagraph 4E hereof), or create or authorize any obligation or security convertible into shares of Preferred Stock or into shares of any other class or series of stock unless the same ranks junior to the Series A Convertible Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation (including a deemed liquidation pursuant to subparagraph 4E hereof), or issue or sell any shares of Preferred Stock at any time after the original issuance date of the Series D Convertible Preferred Stock, except in connection with the payment of the Series A Dividends, Series B Dividends, Series C Dividends or Series D Dividends, whether any such creation, authorization or increase shall be by means of amendment to these Restated Articles of Incorporation or by merger, consolidation or otherwise;

**5B.** Consent to any liquidation, dissolution or winding up of the Corporation (including a deemed liquidation pursuant to subparagraph 4E hereof) or consolidate or merge into or with any other entity or entities or sell, lease, abandon, transfer or otherwise dispose of any material portion of its assets;

H02000166248

FROM

H02000166248

**5C.** Amend, alter or repeal its Restated Articles of Incorporation or Bylaws if the effect would be detrimental or adverse in any manner with respect to the rights of the holders of the Preferred Stock;

**5D.** Register any of its securities under the Securities Act of 1933, as amended, for sale to the public, whether for its own account or the account of others;

**5E.** Purchase or set aside any sums for the purchase of, or pay any dividend or make any distribution on, any shares of stock other than the Preferred Stock, except for (i) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock, (ii) the purchase of shares of Common Stock from former employees of the Corporation who acquired such shares directly from the Corporation, if each such purchase is made pursuant to contractual rights held by the Corporation relating to the termination of employment of such former employee and the purchase price does not exceed the original issue price paid by such former employee to the Corporation for such shares or (iii) the Series A Dividends, Series B Dividends, Series C Dividends and Series D Dividends;

**5F.** Redeem or otherwise acquire any shares of Preferred Stock except as expressly authorized in paragraph 8 of this Article V(b);

**5G.** Incur additional indebtedness in an amount greater than \$1,000,000;

**5H.** Increase the number of shares authorized for issuance pursuant to employee equity incentive plans;

**5I.** After the date of filing of these Restated Articles of Incorporation, issue any shares of Series B Convertible Preferred Stock, Series C Convertible Preferred Stock, or in excess of 14,939,004 shares of Series D Convertible Preferred Stock other than as Series A Dividends, Series B Dividends, Series C Dividends or Series D Dividends;

**5J.** Grant any exclusive license to any material intellectual property of the Corporation;

**5K.** Except for transactions approved by the Board of Directors, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees (other than standard employment arrangements consistent with past practices), with (i) any director, officer, employee or direct or indirect beneficial owner of 5% or more of the outstanding capital stock of any class or series of capital stock of the Company, (ii) any entity of which an individual or entity set forth in the foregoing clause (i) of this subparagraph 5K is a director, officer, employee or direct or indirect beneficial owner of 5% or more of the outstanding capital stock of any class or series of capital stock, (iii) any spouse, former spouse, parent, grandparent, great-grandparent, child, grandchild, great-grandchild or sibling (in each case, whether natural or adopted) (collectively, a "Relative") of any individual set forth in the foregoing clause (i) of this

FROM

H02000166248

subparagraph 5K; or (iv) any Relative of any individual set forth in the foregoing clauses (i) or (iii) of this subparagraph 5K; or

5L. Acquire or agree to acquire a controlling interest in, or all or substantially all of the assets of, any other corporation, partnership, or other business entity.

6. Reserved.

7. Conversion.

7A. Right to Convert. Subject to the terms and conditions of this paragraph 7, the holder of any share or shares of Series B Convertible Preferred Stock or Series C Convertible Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series B Convertible Preferred Stock or Series C Convertible Preferred Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series B Convertible Preferred Stock or Series C Convertible Preferred Stock so to be converted by \$1.974964 and (ii) dividing the result by the conversion price of (x) \$1.974964 per share, (y) in the event that the Corporation has issued at least 2,000,000 shares of Series D Preferred Stock then by \$0.955893 per share, or (z) in case a further adjustment of such price has taken place pursuant to the further provisions of this paragraph 7, then by the conversion price as last adjusted and in effect at the date any share or shares of Series B Convertible Preferred Stock or Series C Convertible Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, with respect to shares of Series B Convertible Preferred Stock, being referred to as the "Series B Conversion Price" and such price, or such price as last adjusted, with respect to shares of Series C Convertible Preferred Stock, being referred to as the "Series C Conversion Price"). Subject to the terms and conditions of this paragraph 7, the holder of any share or shares of Series A Convertible Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series A Convertible Preferred Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series A Convertible Preferred Stock so to be converted by \$1.028648 and (ii) dividing the result by the conversion price of (x) \$1.028648 per share, (y) in the event that the Corporation has issued at least 2,000,000 shares of Series D Preferred Stock then by \$0.748227 per share or (iii) in case a further adjustment of such price has taken place pursuant to the further provisions of this paragraph 7, then by the conversion price as last adjusted and in effect at the date any share or shares of Series A Convertible Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, being referred to as the "Series A Conversion Price"). Subject to the terms and conditions of this paragraph 7, the holder of any share or shares of Series D Convertible Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series D Convertible Preferred Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series D Convertible Preferred Stock so to be converted by \$0.669388 and (ii) dividing the result by the conversion price of \$0.669388 or, in case an adjustment of such price has taken place pursuant to the further provisions of this paragraph 7, then by the conversion price as last adjusted and in effect at the date any share or shares of Series D

138710 v7/RE  
22/2071.DOC

H02000166248

H02000166248

Convertible Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, being referred to as the "Series D Conversion Price"). Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of shares of Preferred Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued. Notwithstanding anything to the contrary in this subparagraph 7A, upon any liquidation of the Corporation the right of conversion shall terminate at the close of business on the business day fixed for payment of the amount distributable on the Preferred Stock.

**7B. Issuance of Certificates; Time Conversion Effected.** Promptly after the receipt of the written notice referred to in subparagraph 7A and surrender of the certificate or certificates for the share or shares of Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, shall be determined as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

**7C. Fractional Shares; Dividends; Partial Conversion.** No fractional shares shall be issued upon conversion of Preferred Stock into Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. At the time of each conversion, the Corporation shall pay in cash an amount equal to all dividends accrued and unpaid on the shares of Preferred Stock surrendered for conversion to the date upon which such conversion is deemed to take place as provided in subparagraph 7B, except to the extent that such dividends were to be paid in shares of capital stock, in which case such dividends shall be so paid. In case the number of shares of Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 7A exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this subparagraph 7C, be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the

H02000166248

H02000166248

holder surrendering the Preferred Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Corporation.

**7D. Adjustment of Price Upon Issuance of Common Stock.** Except as provided in subparagraph 7E, if and whenever the Corporation shall issue or sell, or is, in accordance with subparagraphs 7D(1) through 7D(8), deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Series B Conversion Price in effect immediately prior to the time of such issue or sale, (a "Qualifying Dilutive Issuance") then, forthwith upon such issue or sale, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price (each a "Conversion Price") shall be reduced by multiplying each such Conversion Price times a fraction:

(A) the numerator of which shall be the sum of (x) the number of shares of Common Stock deemed outstanding immediately prior to such issuance plus (y) the number of shares of Common Stock that the consideration, if any, received or deemed received by the Corporation upon such issue or sale would purchase at the then-existing Series B Conversion Price; and

(B) the denominator of which shall be the sum of (x) the number of shares of Common Stock deemed outstanding immediately prior to such issuance plus (y) the number of shares of Common Stock so issued.

For the purposes of this paragraph 7, the number of shares of Common Stock deemed outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date.

For purposes of this subparagraph 7D, the following subparagraphs 7D(1) to 7D(8) shall also be applicable:

**7D(1) Issuance of Rights or Options.** In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the



H02000166248

minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Series B Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph 7D(3), no adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

**7D(2) Issuance of Convertible Securities.** In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Series B Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in subparagraph 7D(3), no adjustment of the Series A Conversion Price, Series B Conversion Price, the Series C Conversion Price or Series D Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Series A Conversion Price, Series B Conversion Price, the Series C Conversion Price or Series D Conversion Price have been or are to be made pursuant to other provisions of this subparagraph 7D, no further adjustment of the Series A Conversion Price, Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price shall be made by reason of such issue or sale.

H02000166248

H02000166248

**7D(3) Change in Option Price or Conversion Rate.** Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in subparagraph 7D(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph 7D(1) or 7D(2), or the rate at which Convertible Securities referred to in subparagraph 7D(1) or 7D(2) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Series A Conversion Price, Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price in effect at the time of such event shall forthwith be readjusted to the Series A Conversion Price, Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price, as applicable, which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold, but only if as a result of such adjustment the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or the Series D Conversion Price then in effect hereunder is thereby reduced; and on the termination of any such Option or any such right to convert or exchange such Convertible Securities, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price then in effect hereunder shall forthwith be increased to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price, as applicable, which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

**7D(4) Stock Dividends.** In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation (other than the Common Stock) payable in Common Stock, Options or Convertible Securities, then any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

**7D(5) Consideration for Stock.** In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in

H02000166248

H02000166248

connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

**7D(6) Record Date.** In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

**7D(7) Treasury Shares.** The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this subparagraph 7D.

**7D(8) Related Dilutive Issuances.** In the event that the Corporation issues or sells, or is deemed to have issued or sold, additional shares of common stock in a Qualifying Dilutive Issuance (the "First Dilutive Issuance"), then in the event that the Corporation issues or sells, or is deemed to have issued or sold, additional shares of common stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance (a "Subsequent Dilutive Issuance") pursuant to the same instruments as the First Dilutive Issuance, then and in each such case upon a Subsequent Dilutive Issuance the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price, as applicable, shall be reduced to the Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance.

**7E. Certain Issues of Common Stock and Preferred Stock Excepted.** Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price in the case of the issuance from and after the date of filing these Restated Articles of Incorporation (i) of up to an aggregate of 3,603,438 shares (appropriately adjusted to reflect the occurrence of any event described in subparagraph 7F) of Common Stock issued or issuable (including but not limited to pursuant to stock options) to directors, officers, employees or consultants of the Corporation in connection with their service as directors of the Corporation, their employment by the Corporation or their retention as consultants by the Corporation, plus such number of shares of Common Stock which are repurchased by the Corporation from such persons after such date pursuant to contractual rights held by the Corporation and at repurchase prices not exceeding the respective original purchase prices paid by such persons to the Corporation therefor, (ii) of shares of Common Stock issued

H02000166248

H02000166248

solely in consideration for the acquisition (whether by merger or otherwise) of all or substantially all of the capital stock or assets of any other entity, provided such acquisition was approved by the Series B Directors and Series D Directors, (iii) of Common Stock in connection with the conversion of Preferred Stock by the holders thereof, (iv) of Preferred Stock as Series A Dividends, Series B Dividends, Series C Dividends or Series D Dividends, (v) of Common Stock pursuant to the exercise of options, warrants or convertible securities outstanding as of the date of filing these Restated Articles of Incorporation, or (vi) of up to an aggregate of 14,939,004 shares of Series D Convertible Preferred Stock.

**7F. Subdivision or Combination of Common Stock.** In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price in effect immediately prior to such combination shall be proportionately increased. In the case of any such subdivision, no further adjustment shall be made pursuant to subparagraph 7D(4) by reason thereof.

**7G. Reorganization or Reclassification.** If any capital reorganization or reclassification of the capital stock of the Corporation (other than a transaction or series of related transactions described in paragraph 4 of this Article V(b)) shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

**7H. Failure to Pay Quarterly Dividend.** If the Corporation fails, for any reason or for no reason, to pay the Series B Dividends or Series D Dividends on any scheduled quarterly payment date in accordance with the terms and conditions of paragraph 3 of this Article V(b), the Series B Conversion Price or Series D Conversion Price, as applicable, then in effect shall be immediately reduced to an amount equal to 98% thereof. Thereafter, until such

H02000166248

H02000166248

Series B Dividends or Series D Dividends have been paid in full in accordance with such terms and conditions, such Series B Conversion Price or Series D Conversion Price, as applicable, shall be further reduced on the following scheduled quarterly payment date and on each scheduled quarterly payment date thereafter to an amount equal to 98% of the Series B Conversion Price or Series D Conversion Price, as applicable, in effect immediately prior to each such reduction.

**7I. Notice of Adjustment.** Upon any adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, then and in each such case the Corporation shall give written notice thereof, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of shares of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock or Series D Convertible Preferred Stock, as applicable, at the address of such holder as shown on the books of the Corporation, which notice shall state the applicable Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

**7J. Other Notices.** In case at any time:

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

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

(3) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into another entity or entities, or a sale, lease, abandonment, transfer or other disposition of all or substantially all its assets; or

(4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, the Corporation shall give, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of any shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 5 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up and (b) in the case of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, at least 5 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such

H02000166248

FROM

H02000166248

dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, as the case may be.

**7K. Stock to be Reserved.** The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the lesser of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price in effect at the time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed. The Corporation will not take any action which results in any adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Preferred Stock would exceed the total number of shares of Common Stock then authorized by these Restated Articles of Incorporation.

**7L. No Reissuance of Preferred Stock.** Shares of Preferred Stock which are converted into shares of Common Stock as provided herein shall not be reissued.

**7M. Issue Tax.** The issuance of certificates for shares of Common Stock upon conversion of Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Preferred Stock which is being converted.

**7N. Closing of Books.** The Corporation will at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion of such Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

**7O. Reserved.**

H02000166248

FROM

H02000166248

**7P. Mandatory Conversion.** If at any time the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock in which (i) the aggregate price paid for such shares by the public shall be at least \$20,000,000 and (ii) the price paid by the public for such shares shall be at least \$2.01 per share (as adjusted for stock splits, dividends and the like) then effective upon the closing of the sale of such shares by the Corporation pursuant to such public offering, all outstanding shares of Preferred Stock shall automatically convert to shares of Common Stock on the basis set forth in this paragraph 7. In addition, upon the affirmative election of the holders of at least a majority of the then outstanding shares of Preferred Stock (determined on an as-converted basis), all outstanding shares of Preferred Stock shall automatically convert to shares of Common Stock on the basis set forth in this paragraph 7; provided, however, that in the event of a merger, acquisition, consolidation or sale of the Company or its assets (or any other deemed liquidation pursuant to subparagraph 4E hereof), such automatic conversion shall not be effective as to the Series D Convertible Preferred Stock without the consent of the holders of at least a majority of the then outstanding shares of Series D Convertible Preferred Stock (determined on an as-converted basis), unless the amount payable to the holders of Series D Convertible Preferred Stock upon conversion to Common Stock in connection with such merger, acquisition, consolidation, sale or deemed liquidation would be equal to or greater than the amount payable to such holders of Series D Convertible Preferred Stock if the Series D Convertible Preferred Stock were not converted to Common Stock in connection with such merger, acquisition, consolidation, sale or deemed liquidation. Holders of shares of Preferred Stock so converted may deliver to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to such holders) during its usual business hours, the certificate or certificates for the shares so converted. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares to which such holder may be entitled pursuant to subparagraph 7C. Until such time as a holder of shares of Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.

**8. Redemption.** The shares of Preferred Stock shall be redeemed as follows:

**8A. Optional Redemption.** At the election of the holders of at least a majority of the then outstanding shares of Preferred Stock (determined on an as-converted basis), all holders of Preferred Stock shall have the right to redeem some or all (as determined by the holders of at least a majority of the then outstanding Preferred Stock, determined on an as-converted basis) of their holdings of the Preferred Stock in three (3) equal annual installments beginning not prior to July 16, 2007 and ending on the date two (2) years from such first redemption date (each a "Scheduled Redemption Date" or "Redemption Date") at the redemption price defined herein.

FROM

H02000166248

**8B. Redemption Price and Payment.** The Company shall effect such redemptions on the applicable Redemption Date by paying for each share to be redeemed on such Redemption Date in cash an amount equal to the greater of (i) \$1.974964 per share of Series B Convertible Preferred Stock and Series C Convertible Preferred Stock, \$1.028648 per share of Series A Convertible Preferred Stock or \$0.669388 per share of Series D Convertible Preferred Stock, plus any accrued but unpaid dividends computed to such Redemption Date, or (ii) the value of the Common Stock into which the Preferred Stock to be redeemed is convertible (the amount to be paid hereunder with regard to the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock and Series D Convertible Preferred Stock is referred to as the "Series A Redemption Price," "Series B Redemption Price," "Series C Redemption Price," and the "Series D Redemption Price" respectively, and individually as a "Redemption Price"). The number of shares to be redeemed on each Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of outstanding shares of Preferred Stock remaining to be redeemed pursuant to this paragraph 8 immediately prior to such Redemption Date divided by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Such payment shall be made in full on such Redemption Date to the holders entitled thereto. For purposes of this subparagraph 8B, the value of the Common Stock shall be determined in good faith by the Corporation's Board of Directors (excluding the Preferred Stock Directors) and the holders of a majority of the Preferred Stock. If the Corporation and the holders of a majority of the Preferred Stock are unable to agree on such fair market value, the Corporation's Board of Directors (excluding the Preferred Stock Directors) and the holders of a majority of the Preferred Stock shall appoint an appraiser, or if the Corporation and the holders of the Preferred Stock fail within ten business days to agree upon an appraiser, an appraiser shall be appointed by the American Arbitration Association, Boston, Massachusetts, upon application of any party. The appraiser shall be a member or an associate of an independent investment banking firm, a public accounting firm, or another person experienced in valuing the securities of entities in businesses similar to the Corporation's. The Corporation shall promptly furnish to the appraiser such information concerning its financial condition, earnings, capitalization, business prospects and sales of its capital stock as they may reasonable request. The appraiser shall independently determine the value of such securities or other property as of the Redemption Date. The appraiser shall promptly notify in writing the Corporation and the holders of the Preferred Stock of the appraiser's final determination of value. The fees and expenses of the appraiser shall be borne by the Corporation.

**8C. Redemption Mechanics.** At least 20 but not more than 30 days prior to the Scheduled Redemption Date, written notice (the "Scheduled Redemption Notice") shall be given by the Corporation by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, to each holder of record (at the close of business on the business day next preceding the day on which the Scheduled Redemption Notice is given) of shares of Preferred Stock notifying such holder of such holder's right of redemption and specifying the Series A Redemption Price, Series B Redemption Price, Series C Redemption Price or Series D Redemption Price, as applicable, the Scheduled Redemption Date and the place where said Series A Redemption Price, Series B Redemption Price, Series C Redemption Price or Series D



FROM

H02000166248

Redemption Price shall be payable. The Scheduled Redemption Notice shall be addressed to each holder at his address as shown by the records of the Corporation. Upon receipt of the Scheduled Redemption Notice, any holder of Preferred Stock who desires to redeem any or all of its shares shall notify the Corporation of its intent to exercise such right of redemption by delivery of notice to the Corporation to such effect at least five days prior to the Scheduled Redemption Date. From and after the close of business on a Redemption Date, unless there shall have been a default in the payment of the Series A Redemption Price, Series B Redemption Price, Series C Redemption Price or Series D Redemption Price, all rights of holders of shares of the redeemed Preferred Stock (except the right to receive the applicable Series A Redemption Price, Series B Redemption Price, Series C Redemption Price or Series D Redemption Price) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Preferred Stock on a Redemption Date are insufficient to redeem the total number of outstanding shares of Preferred Stock to be redeemed, the holders of the shares of Series D Convertible Preferred Stock to be redeemed shall first share ratably in any funds legally available for redemption of shares of Preferred Stock, before any shares of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock or Series C Convertible Preferred Stock are redeemed, according to the respective amounts which would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series D Convertible Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter and before any Series A Convertible Preferred Stock, Series B Convertible Preferred Stock or Series C Convertible Preferred Stock is redeemed, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above. After all Series D Convertible Preferred Stock to be redeemed on the Scheduled Redemption Date have been redeemed, if the funds of the Corporation legally available for redemption of shares of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Series C Convertible Preferred Stock on the Scheduled Redemption Date are insufficient to redeem the total number of outstanding shares of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Series C Convertible Preferred Stock to be redeemed, the holders of shares of Series B Convertible 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 full number of shares owned by them if all such outstanding shares were redeemed in full. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series B Convertible Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter and before any shares of Series A Convertible Preferred Stock or Series C Convertible Preferred Stock is redeemed, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above. After all Series B Convertible Preferred Stock to be redeemed on the Scheduled Redemption Date have been redeemed, if the funds of the Corporation legally available for redemption of Series A Convertible Preferred Stock and Series C Convertible Preferred Stock on the Scheduled Redemption Date are insufficient to redeem the total number of outstanding shares of Series A Convertible Preferred Stock and Series C

(MON) 7.15'02 12:38/ST. 12:25/NO. 4863354356 P 26  
H02000166248

FROM

Convertible Preferred Stock to be redeemed, the holders of such shares 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 full number of shares owned by them if all such outstanding shares were redeemed in full. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series A Convertible Preferred Stock and Series C Convertible Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein.

**8D. Redeemed or Otherwise Acquired Shares to be Retired.** Any shares of Preferred Stock redeemed pursuant to this paragraph 8 or otherwise acquired by the Corporation in any manner whatsoever shall be cancelled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Preferred Stock.

**9. Amendments.** No provision of these terms of the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock or Series D Convertible Preferred Stock may be amended (whether by merger, consolidation or otherwise), modified or waived without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Preferred Stock (such majority to be determined on the basis of the number of shares of Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible) and any vote or written consent required by paragraph 5 of this Article V(b).

**10. Remedies Upon An Event Of Default.** In the event that the Corporation fails or refuses, for any reason or for no reason, to (i) pay Series B Dividends or Series D Dividends within fifteen days of any scheduled quarterly payment date, or (ii) redeem on a Redemption Date all of the then outstanding shares of Preferred Stock required to be redeemed on such Redemption Date in accordance with the terms and provisions stated in paragraph 8 of this Article V(b), then such failure to pay Series B Dividends or Series D Dividends or to redeem shall be deemed an "Event of Default." Upon an Event of Default, the directors of the Corporation shall be elected as follows. The holders of the Series B Convertible Preferred Stock, voting as a separate series, shall be entitled to elect three (3) directors of the Corporation. The holders of the Series A Convertible Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director of the Corporation. The holders of Series D Preferred Stock, voting as a separate series, shall be entitled to elect three (3) directors of the Corporation. The holders of the Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect one (1) director of the Corporation. Upon the election of the directors as hereinabove provided, the terms of office of all persons who were theretofore directors of the Corporation shall forthwith terminate.

If, after the election of a new Board of Directors pursuant hereto, the Event of Default is cured, then the holders of the Preferred Stock shall be divested of the special voting

H02000166248

rights specified in this paragraph 10. However, the special voting rights of this paragraph 10 shall again accrue to the holders of the shares of the Preferred Stock, in case of any later occurrence of an Event of Default. Upon the termination of any such special voting rights as hereinabove provided, the Board of Directors shall promptly call a special meeting of the stockholders at which all directors will be elected, and the terms of office of all persons who are then directors of the Corporation shall terminate immediately upon the election of their successors.

Whenever under the provisions hereof, the right shall have accrued to the holders of the Preferred Stock to elect the Corporation's directors, the Board of Directors shall, within ten (10) days after delivery to the Corporation at its principal office of a request to such effect by the holders or the holders of a majority of the then outstanding shares of Preferred Stock (such majority to be determined on the basis of the number of shares of Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible), call a special meeting of stockholders for the election of directors, to be held upon not less than ten (10) nor more than twenty (20) days' notice to such holders. If such notice of meeting is not given within the ten (10) days required above, the holders of Preferred Stock requesting such meeting may directly call such meeting and for such purposes shall have access to the stock books and records of the Corporation. At any meeting so called or at any other meeting held while the holders of shares of the Preferred Stock shall have the voting power provided herein, the holders of a majority of the shares of the Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock and the Series D Convertible Preferred Stock, each voting as a separate class, present in person or by proxy or voting by written consent, shall be sufficient to constitute a quorum for the election of directors to be elected by that series as herein provided. In the case that a quorum for either the holders of the Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock or the Series D Convertible Preferred Stock is not present at such meeting, the director(s) to be elected (i) by the series of stock for which a quorum is not present, and (ii) jointly by both of those series of stock, will not be elected, the director(s) holding those positions immediately prior to the meeting shall remain in office, and only the directors to be elected by the series of stock for which a quorum is present may be elected.

In the case of any vacancy in the office of a director occurring among the directors elected hereunder, the remaining directors so elected by that class may by affirmative vote of a majority thereof (or the remaining director so elected if there be but one) elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant, provided that if there are no remaining directors so elected by that class, the vacancies may be filled by the affirmative vote of the holders of a majority of the shares of the Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock or the Series D Convertible Preferred Stock, as applicable, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. Any directors who shall have been elected by the holders of the Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock or the Series D Convertible Preferred Stock or by any directors so elected as provided in the next preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders

138710.v7/RE  
2212071.DOC

H02000166248

FROM

H02000166248

of a majority of the shares of the Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock or the Series D Convertible Preferred Stock who elected such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of the Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock or the Series D Convertible Preferred Stock, as applicable, represented at such meeting or pursuant to such consent.

The number of shares of authorized Common Stock may be increased or decreased (but not below the number then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class notwithstanding any contrary provisions of the Florida Statutes.

#### ARTICLE 6

##### Registered Office and Agent

The street address of the registered office of this Corporation is Foley & Lardner, 100 North Tampa Street, Suite 2700, Tampa, Florida 33602, and the name of its registered agent at such address is Randolph J. Wolfe.

#### ARTICLE 7

##### Board of Directors

The names and addresses of the current Directors of this Corporation are:

<u>Name</u>	<u>Address</u>
Kurt J. Long	13577 Feather Sound Drive Suite 390 Clearwater, Florida 33762
Robert Daly	MedEquity Investors Partners, LLC 16 Laurel Avenue, Suite 150 Wellesley Hills, Massachusetts 02481-7525
Manny Fernandez	SI Venture Fund II, L.P. 12600 Gateway Boulevard Fort Myers, Florida 33913
Edward Iacobucci	901 South Ocean Boulevard Del Ray Beach, Florida 33483
Brandon Ingersoll	MedEquity Investors Partners, LLC 16 Laurel Avenue, Suite 150

H02000166248

FROM

07/15/2002 12:24PM

H02000166248/2

David A. MacSwain

Wellesley Hills, Massachusetts 02481-7525

38649 Holmsmill Road  
Hamilton, Virginia 20158

M. Edward Sellers

Blue Cross Blue Shield of South Carolina  
I-20 at Alpine Road  
Columbia, South Carolina 29219-0001

#### ARTICLE 8

##### Execution

The name and address of the person signing these Restated Articles of Incorporation are:

Name

Address

Michael J. Landis

13577 Feather Sound Drive  
Suite 390  
Clearwater, Florida 33762

#### ARTICLE 9

##### Indemnification

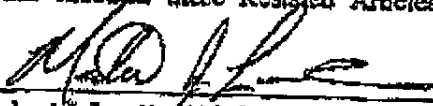
All of the officers and Directors of the Corporation shall be indemnified against, and absolved of, liability to the Corporation and its shareholders to the maximum extent permitted under the laws of the State of Florida.

#### ARTICLE 10

##### Amendment

Except as expressly provided herein to the contrary, these Restated Articles of Incorporation may be amended in the manner provided by law.

IN WITNESS WHEREOF, the undersigned has executed these Restated Articles of Incorporation, this 15th day of July, 2002.

  
Michael J. Landis, Chief Financial Officer

ACCEPTANCE BY REGISTERED AGENT

07/15/2002 13:31 CCRS → 2050380


NO. 531 024

FROM

H02000166248

Having been named Registered Agent and designated to accept service of process for the within-named Corporation, at the place designated herein, I hereby agree to act in this capacity and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

Dated: July 15, 2002

  
Randolph J. Wolfe, Registered Agent  
100 N. Tampa Street  
Suite 2700  
Tampa, Florida 33602

H02000166248