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## BASIC AMENDMENT

DYADIC INTERNATIONAL, INC.

Certificate of Status	0
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Amended + Restated  
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DIVISION OF CORPORATIONS

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04 MAR 24 PM 12:00

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**ARTICLES OF RESTATEMENT  
OF  
DYADIC INTERNATIONAL, INC.**

Pursuant to the provisions of Section 607.1007 of the Florida Business Corporation Act, Dyadic International, Inc. a Florida corporation, does hereby make and certify these Articles of Restatement of its Articles of Incorporation:

1. The name of the corporation is: Dyadic International, Inc.
2. The amended and restated Articles of Incorporation, containing the text of amendments adopted restating the Articles in their entirety, is set forth as Exhibit A attached to these Articles of Restatement and incorporated herein.
3. The amendments contained in the amended and restated Articles of Incorporation set forth as Exhibit A attached to these Articles of Restatement do not require shareholder approval and have been approved by the board of directors of the corporation.

Dated: MARCH 23, 2004

DYADIC INTERNATIONAL, INC.

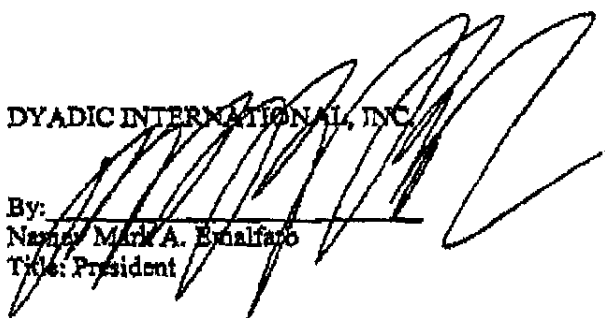
By:   
Name: Mark A. Esposito  
Title: President

Exhibit A

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
DYADIC INTERNATIONAL, INC.**

**ARTICLE FIRST**

**Name**

The name of the corporation is:

Dyadic International, Inc.

**ARTICLE SECOND**

**Initial Principal Office**

The street address of the initial principal office of the corporation is:

140 Intracoastal Drive, Suite 404  
Jupiter, Florida 33477

The board of directors of the corporation, or an officer of the corporation acting under the authority of the board of directors, is authorized to change the principal office of the corporation from time to time without amendment to these Articles of Incorporation.

**ARTICLE THIRD**

**Authorized Shares**

(1) **Authorized Capital Stock.** The aggregate number of shares which the corporation shall have authority to issue is 150,000,000, consisting of (i) 100,000,000 shares of Common Stock, no par value per share, and (ii) 50,000,000 shares of Preferred Stock, no par value per share, of which 3,111,110 shares shall be Series A Preferred Stock, and 2,222,222 shares shall be Series B Preferred Stock.

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(2) Common Stock.

(a) Holders of the Common Stock shall be entitled to one vote per share on all matters submitted to a vote of the shareholders of the corporation, except matters required to be voted on exclusively by holders of Preferred Stock or of any series of Preferred Stock. Subject only to the prior rights and preferences of the Preferred Stock, the holders of the Common Stock shall be entitled to dividends thereon, when, as and if declared by the board of directors out of funds of the corporation legally available therefor. In the event of any dissolution or liquidation of the corporation, the holders of the Common Stock shall be entitled to receive, pro rata, (i) all of the assets of the corporation remaining available for distribution, if any; or (ii) in the event shares of Series A Preferred Stock or Series B Preferred Stock are outstanding, assets of the corporation in accordance with Section 2(c) of Article THIRD (5).

(b) Earnings allocated to holders of Common Stock on or before the Closing Date which have not been distributed prior to March 1, 2001, shall be capitalized by the Corporation and the Corporation shall issue to such holders of Common Stock a subordinated promissory note (the "Common Stock Note") for the full amount thereof. The Common Stock Note shall bear interest at the Applicable Federal Rate, compounded annually. The Common Stock Note shall become immediately due and payable upon the earlier to occur of (i) a Qualified Public Offering, (ii) the occurrence of a Liquidation Event, (iii) the repurchase or conversion of all of the Series A Preferred Stock outstanding immediately prior to such repurchase or conversion or (iv) ten (10) years after the date of issuance of the Common Stock Note. At any time and from time to time, a holder of a Common Stock Note may convert all or part of the principal amount or accrued and unpaid interest thereof into shares of Common Stock. The conversion price per share of Common Stock shall be equal to the fair market value of the Common Stock determined in accordance with Section 2(b)(i) of Article THIRD (5) hereof. Before any holder of a Common Stock Note shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the Note, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert all or part of the Common Stock Note and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the Common Stock Note to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. In the event that less than the entire principal and interest amount of the Common Stock Note is converted, the Corporation shall promptly issue and deliver to the holder a new Common Stock Note of like tenor for the balance remaining unconverted.

(3) Preferred Stock. Shares of the Preferred Stock may be issued from time to time in one or more series. The board of directors by resolution shall establish each series of Preferred Stock and fix and determine the number of shares and the designations, preferences, limitations and relative rights of each such series, provided that all shares of the Preferred Stock shall be identical except as to any relative rights and preferences, as to which there may be variations

fixed and determined by the board of directors between different series including, without limitation, the following:

- (a) Special, unconditional or limited voting rights or no right to vote.
- (b) Whether the shares are redeemable or convertible, at the option of the corporation, the shareholder or another person or upon the occurrence of a designated event, for cash, indebtedness, securities or other property or in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.
- (c) Rights to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative.
- (d) Preferences over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

Except to the extent expressly prohibited in the rights and preferences previously designated for any series of Preferred Stock, including the rights and preferences designated in this Amended and Restated Articles of Incorporation, or by the laws of the State of Florida, the board of directors may, without a vote thereon by the holders of any previously designated series of Preferred Stock, (i) increase the number of shares of any such previously designated series or (ii) establish a new series of Preferred Stock and fix and determine rights and preferences for such new series which rank *pari passu* with, or are prior and superior to, any of the rights and preferences of any such previously designated series.

(4) No Preemptive Rights. No holder of Common Stock or Preferred Stock of the corporation shall have any preemptive or preferential right to subscribe to or purchase any shares of Common Stock or Preferred Stock of the corporation, whether now or hereafter authorized, or any obligations convertible into shares of Common Stock or Preferred Stock of the corporation, all preemptive and preferential rights being expressly denied.

(5) Preferences and Restrictions of Series A Preferred Stock. The rights, preferences, restrictions and other matters relating to the Series A Preferred Stock are as follows:

Section 1. Dividends.

1.1 General Obligation. When and as declared by the Corporation's Board of Directors and to the extent permitted under the Florida Business Corporation Act, the Corporation shall pay preferential dividends in cash to the holders of the Series A Preferred Stock as provided in this Section 1. Except as otherwise provided herein, dividends on each share of the Series A Preferred Stock (each, a "Series A Preferred Share"), shall accrue on an annual basis at the rate of eight percent (8%) per annum of the sum of \$4.50 (the "Original Purchase Price") plus all accumulated and unpaid dividends thereon, from and including the date of issuance of each such Series A Preferred Share to and including the first to occur of (i) the date on which the Liquidation Value of such Series A Preferred Share is paid to the holder thereof in connection with the liquidation of the Corporation, (ii) the date on which the Put Price is paid to the holder thereof upon such holder's exercise of the Put Option, (iii) the date on which such Series A Preferred Share is converted into shares of Conversion Stock hereunder or (iv) the

date on which such Series A Preferred Shares are otherwise acquired by the Corporation, upon which events such amounts shall be paid in full. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends, and such dividends shall be cumulative such that all accrued and unpaid dividends shall be fully paid or declared with funds irrevocably set apart for payment before any dividends (whether in cash, property or other securities of the Corporation) or distributions may be declared, accrued or paid or redemptions or other payments may be made with respect to any Junior Securities, other than stock splits or dividends payable in shares of Common Stock. The date on which the Corporation initially issues a Series A Preferred Share shall be deemed to be its "date of issuance" regardless of the number of times transfer of such Series A Preferred Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Series A Preferred Share.

1.2 Dividend Reference Dates. Subject to Section 1.6 below, to the extent not paid on the anniversary of the Closing Date of each year, beginning on the one year anniversary of the Closing Date (the "Dividend Reference Dates"), all dividends which have accrued on each Series A Preferred Share outstanding during the twelve month period (or other period in the case of the initial Dividend Reference Date) ending upon each such Dividend Reference Date shall be accumulated and shall remain accumulated dividends with respect to such Series A Preferred Share until paid to the holder thereof.

1.3 Distribution of Partial Dividend Payments. Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series A Preferred Stock, such payment shall be distributed pro rata among the holders thereof as one and the same class based upon the aggregate accrued but unpaid dividends on the Series A Preferred Shares held by each such holder.

1.4 Payment of Dividends with Series A Preferred Shares. Notwithstanding any other provision of this Section 1, at the election of the Corporation, any dividends accruing on the Series A Preferred Stock may be paid in lieu of cash dividends by the issuance of additional shares of Series A Preferred Stock, in each case equal to the number of shares equal to the quotient obtained by dividing the amount of such dividends to be paid by the respective per share Conversion Price then in effect; provided that if the Corporation pays less than the total amount of dividends then accrued on the Series A Preferred Stock in the form of additional shares, such payment in shares shall be made pro rata among the holders thereof as one and the same class based upon the aggregate accrued but unpaid dividends on the Series A Preferred Shares held by each such holder. If and when any shares are issued under this Section 1.4 for the payment of accrued dividends, such shares shall be deemed to be validly issued and outstanding and fully paid and nonassessable. For all purposes, the shares issued under this Section 1.4 shall be deemed to be Series A Preferred Stock and subject to all rights, preferences, privileges and payments thereof.

1.5 Participating Dividends. In the event that the Corporation declares or pays any dividends upon the Common Stock (whether payable in cash, securities or other property) other than dividends payable solely in shares of Common Stock, the Corporation shall also declare and pay to the holders of the Series A Preferred Stock at the same time that it declares and pays such

dividends to the holders of the Common Stock, the dividends which would have been declared and paid with respect to the Common Stock issuable upon conversion of the Preferred Stock had all of the outstanding Series A Preferred Stock been converted immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined, in addition to and after the payment of any and all dividends accrued or due and payable to the holders of Series A Preferred Stock pursuant to Section 1.1 prior to the payment of dividends to the holders of all Junior Securities. The amount of dividends paid or accrued pursuant to Section 1.1 hereof shall be credited against participating dividends payable to the holders of the Series A Preferred Stock pursuant to this Section 1.5.

1.6 Certain Events within Two Years of Closing Date. Notwithstanding anything to the contrary contained in this Section 1, no accumulated dividends shall be paid to any holder of Series A Preferred Stock until the earlier to occur of (i) the second anniversary of the Closing Date, (ii) consummation of an underwritten Public Offering, (iii) the occurrence of a Liquidation Event, (iv) the conversion of all of the Series A Preferred Shares then held by such holder, or (v) the date on which the Series A Preferred Shares held by such holder are otherwise acquired by the Corporation; provided that if a Qualified Public Offering is consummated prior to the occurrence of any of the events set forth in clauses (i) through (v) above, any dividends accrued through the closing of the Qualified Public Offering shall be extinguished.

## Section 2. Liquidation.

(a) Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary) (a "Liquidation Event"), each holder of Series A Preferred Stock shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities, cash in an amount equal to the aggregate Liquidation Value of the Series A Preferred Shares held by such holder, and the holders of Series A Preferred Stock shall be entitled no further payment except as provided in Section 2(c). Notwithstanding the foregoing, upon any such Liquidation Event, if the assets of the Corporation to be distributed among the holders of Series A Preferred Stock are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid, then the assets of the Corporation to be distributed to such holders shall be distributed pro rata among such holders of Series A Preferred Stock based upon the aggregate Liquidation Value of the Series A Preferred Shares held by each such holder.

Prior to the liquidation, dissolution or winding up of the Corporation, the Corporation shall declare for payment all accrued and unpaid dividends, with respect to the Series A Preferred Stock, but only to the extent of funds of the Corporation legally available for the payment of dividends. Not less than sixty (60) days prior to the payment date stated therein, the Corporation shall mail written notice of any such Liquidation Event to each record holder of Series A Preferred Stock, setting forth in reasonable detail the amount of proceeds to be paid with respect to each Series A Preferred Share and each share of Junior Securities in connection with such Liquidation Event.

(b) Upon the election of the holders of at least a majority of the voting power of all then outstanding Series A Preferred Stock, any consolidation or merger of the Corporation with or into another entity or entities (in the event that the Corporation is not the surviving entity) or

any sale or transfer by the Corporation of all or substantially all of its assets (determined either for the Corporation alone or with its Subsidiaries on a consolidated basis) or any sale, transfer or issuance or series of sales, transfers and/or issuances of shares of the Corporation's capital stock by the Corporation or the holders thereof as a result of which more than 50% of the voting power of the Corporation is sold or transferred to a single person or group of affiliated persons shall be deemed to be a Liquidation Event for purposes of this Section 2, and the holders of the Series A Preferred Stock shall be entitled to receive payment from the Corporation of the amounts payable with respect to the Series A Preferred Stock, upon a Liquidation Event under this Section 2 in cancellation of their Series A Preferred Shares upon the consummation of any such transaction.

(i) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value.

Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability shall be valued as follows:

- (1) If traded on a securities exchange or through Nasdaq, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing;
- (2) If actively traded over the counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and
- (3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding Series A Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding Series A Preferred Stock.



(ii) In the event the requirements of this subsection 2(b) are not complied with, the Corporation shall forthwith either:

- (A) cause the closing of such transaction to be postponed until such time as the requirements of this Section 2 have been complied with; or
- (B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection (b)(iii) of this Section 2.

(iii) The Corporation shall give each holder of record of Series A Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series A Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding Series A Preferred Stock.

(c) In addition to and after payment in full of all other amounts payable to the holders of the Series A Preferred Stock under this Section 2 and after payment in full of an aggregate amount of Forty Five Million Dollars (\$45,000,000) to the holders of Common Stock, upon any Liquidation Event, the holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to participate on an as if converted basis with the holders of Common Stock as a single class in the distribution of assets of the Corporation in the amount of distributions which would have been payable with respect to the Common Stock issuable upon the conversion of the Series A Preferred Stock and Series B Preferred Stock had all of the outstanding Series A Preferred Stock and Series B Preferred Stock been converted immediately prior to the record date for such distribution, or, if no such date is fixed, the date as of which the record holders of Common Stock entitled to such distribution are to be determined.

### **Section 3. Priority of Series A Preferred Stock on Dividends and Redemptions.**

So long as any Series A Preferred Stock remains outstanding, without the prior written consent of the holders of a majority of the voting power of all then outstanding shares of Series A Preferred Stock, the Corporation shall not, nor shall it permit any Subsidiary to, redeem, purchase or otherwise acquire directly or indirectly any Junior Securities.

**Section 4. Put Option.**

(a) If by the fifth anniversary of the Closing Date, the Corporation has not consummated a Qualified Public Offering or a merger with or into another entity (in which the Corporation is not the surviving entity), then thereafter each holder of the Series A Preferred Stock then outstanding shall have the right (but not the obligation) to require the Corporation to purchase the Series A Preferred Shares held by such holder (the "Put Option"). A holder of Series A Preferred Stock shall exercise its Put Option by sending written notice (the "Put Notice") to the Corporation indicating its desire to have the Corporation purchase its Series A Preferred Shares at the price and on the terms and conditions provided in this Section 4.

(b) For each Series A Preferred Share which is to be purchased hereunder, the Corporation shall be obligated to pay to the holder thereof (the "Put Price") upon surrender by such holder at the Corporation's principal office of the certificate (representing such Series A Preferred Share) an amount equal to the greater of (x) the fair market value thereof and (y) the Conversion Price then in effect plus all accrued but unpaid dividends thereon to the extent not reflected in the fair market value thereof. The "fair market value" shall be the fair market price of a Series A Preferred Share subject to purchase by the Corporation as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding Series A Preferred Stock. In the event that the Corporation and the holders of at least a majority of the voting power of all then outstanding Series A Preferred Stock are unable to agree upon a valuation within twenty (20) days from the giving of the Put Notice, a third party appraiser shall be chosen by mutual agreement of the parties. The determination of the fair market value shall be delivered within thirty (30) days of such selection and shall be final and binding upon the parties. In the event that the parties are unable to agree upon a third party appraiser, the matter of valuation shall be submitted to binding arbitration in New York, New York pursuant to the rules of the American Arbitration Association by three arbitrators, one selected by the Corporation, one selected by the holders of Series A Preferred Stock and a third arbitrator selected by the other two arbitrators. Each party shall pay the cost of its own arbitration and its participation in the arbitration, and the parties shall divide the cost of the third arbitrator.

(c) The closing of the Put Option for any Series A Preferred Shares to be purchased hereunder shall be held at the offices of the Corporation within thirty (30) days after delivery of a Put Notice to the Corporation by any holder of Series A Preferred Stock (the "Put Closing Date").

(d) If (i) the funds of the Corporation legally available for purchase of Series A Preferred Shares on the Put Closing Date are insufficient to purchase the total number of Series A Preferred Shares to be purchased on such date, (ii) the Corporation is restricted from purchasing such Series A Preferred Shares pursuant to bank or other financing agreements in effect as of the Closing Date or (iii) the Board of Directors of the Corporation determines in good faith that payment of an amount to purchase shares of Series A Preferred Stock will impair the ability of the Corporation to operate in the ordinary course of business, those funds which are legally available or which are permitted to be used for such purposes or which are not necessary to operate in the ordinary course of business shall be used to purchase the maximum possible number of Series A Preferred Shares pro rata among the holders of the Series A Preferred Shares to be purchased as one and the same class based upon the aggregate Put Price of such Series A

Preferred Shares held by each such holder (plus all accrued but unpaid dividends thereon). At any time thereafter when additional funds of the Corporation are legally available or such restrictions under bank or other financing agreements expire or which are not necessary to maintain operation of the Corporation in the ordinary course, such funds shall, as soon as practicable, be used to purchase the balance of the Series A Preferred Shares which the Corporation has become obligated to purchase on any Put Closing Date but which it has not purchased. Prior to any purchase of Series A Preferred Stock, the Corporation shall declare for payment all accrued and unpaid dividends with respect to the Series A Preferred Shares which are to be purchased, but only to the extent of funds of the Corporation legally available for the payment of dividends.

(e) In case fewer than the total number of Series A Preferred Shares represented by any certificate are purchased, a new certificate representing the number of not purchased Series A Preferred Shares shall be issued to the holder thereof without cost to such holder within five (5) business days after surrender of the certificate representing the purchased Series A Preferred Shares.

(f) On or before the Put Closing Date, each holder of Series A Preferred Shares to be purchased on the Put Closing Date shall surrender the certificate or certificates representing such shares to the Corporation, and thereupon the Put Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired.

(g) If the Put Notice shall have been duly given, and if on the applicable Put Closing Date, the Put Price payable for the Series A Preferred Shares to be purchased on such Put Closing Date is paid or tendered for payment, then notwithstanding that the certificates evidencing any of the Series A Preferred Shares so offered for purchase shall not have been surrendered, dividends with respect to such Series A Preferred Shares shall cease to accrue after such Put Closing Date and all rights with respect to such shares shall forthwith after the Put Closing Date terminate, except only the right of the holders to receive the Put Price without interest upon surrender of their certificate or certificates therefor.

(h) Any Series A Preferred Shares which are purchased or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares and shall not be reissued, sold or transferred.

#### Section 5. Voting Rights.

(a) The holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A Preferred Stock could then be converted, and with respect to such vote (but subject to subsection (b) of this Section 5 below), such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock (but subject to subsection (b) of this Section 5 below) with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting

rights available on an as converted basis (after aggregating all shares into which Series A Preferred Shares held by each holder could be converted) shall be rounded to the nearest whole number (with one half being rounded upward).

(b) The Board of Directors shall consist of five (5) members, elected as follows:

(i) The holders of a majority of the voting power of all then outstanding Series A Preferred Stock, voting together as a single class separately from the holders of the Common Stock, shall be entitled to elect two (2) members of the Board of Directors (each a "Series A Nominee") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. In the event a person not affiliated with Cooper Hill Partners, LLC is designated by the holders of Series A Preferred Stock, such nominee shall be approved by Mark A. Emalfarb or, in the event Mr. Emalfarb is deceased or disabled, by the Chief Executive Officer of the Corporation, such approval not to be unreasonably withheld. The holders of a majority of the voting power of all Series A Preferred Stock then outstanding shall have the right to cause the Series A Nominee to be removed as a member of the Board of Directors for any reason or for no reason. In the event that the Series A Nominee shall cease to serve as a director of the Corporation for any reason or for no reason (including, without limitation, by reason of removal by the holders of Series A Preferred Stock), the holders of Series A Preferred Stock shall be entitled to elect a successor to the Series A Nominee whose service has so ceased.

(ii) The holders of the Common Stock, voting together as a single class separately from the holders of the Series A Preferred Stock, shall be entitled to elect three (3) members of the Board of Directors (each a "Common Stockholder Nominee") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The Common Stockholder nominee shall be approved by Mark A. Emalfarb or, in the event Mr. Emalfarb is deceased or disabled, by the Chief Executive Officer of the Corporation. With respect to each Common Stockholder Nominee, holders of a majority of the Common Stock, voting together as a single class separately from the holders of the Series A Preferred Stock, then outstanding shall have the right to cause such Common Stockholder Nominee to be removed as a member of the Board of Directors for any reason or for no reason. In the event that any Common Stockholder Nominee shall cease to serve as a director of the Corporation for any reason or for no reason (including, without limitation, by reason of removal), the holders of a majority of the Common Stock shall be entitled to elect a successor to the Common Stockholder Nominee whose service has so ceased, who shall be designated by the holders of Common Stock.

#### Section 6. Conversion.

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

(a) Right to Convert. At any time and from time to time, any holder of Series A Preferred Stock may convert all (but not less than all) of the Series A Preferred Stock

(including any fraction of a Series A Preferred Share) held by such holder into a number of shares of Conversion Stock computed by multiplying the number of Series A Preferred Shares to be converted by the Original Purchase Price of such Series A Preferred Share and dividing the result by the applicable Conversion Price then in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per Series A Preferred Share shall be the Original Purchase Price thereof; provided, however, that the Conversion Price for the Series A Preferred Stock shall be subject to adjustment as set forth in subsection (d) of this Section 6.

(b) Automatic Conversion. All of the outstanding Series A Preferred Stock shall be automatically converted at the then current Conversion Price upon the Corporation's effecting a firm commitment underwritten Public Offering of shares of its Common Stock (subject to the closing of the sale of such shares) in which (i) the aggregate price paid by the public for the shares is greater than \$25 million (before taking into account underwriter commissions and discounts) and (ii) the price per share paid by the public for such shares is at least two times the Original Purchase Price (a "Qualified Public Offering").

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the Series A Preferred Shares to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten Public Offering, the conversion may, at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Series A Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, after the date upon which any Series A Preferred Shares were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price equal to the quotient obtained by

dividing the total computed under clause (x) below by the total computed under clause (y) below as follows:

- (x) an amount equal to the sum of
  - (1) the product obtained by multiplying (a) the total number of shares of Common Stock outstanding immediately prior to such issuance (including, without limitation, any shares of Common Stock deemed to have been issued prior to such issuance) by (b) the Conversion Price for such series in effect immediately prior to such issuance, plus
  - (2) the aggregate consideration, if any, received by the Corporation in connection with such issuance of Additional Stock;
- (y) the total number of shares of Common Stock outstanding immediately after such issuance (including, without limitation, any shares of Common Stock deemed issued prior to, or in connection with, such issuance).

However, the foregoing calculation shall not take into account shares deemed issued pursuant subsection (d)(i)(E) of this Section 6 on account of options, rights or Convertible Securities (or the actual or deemed consideration therefor), except to the extent (i) such options, rights or Convertible Securities have been exercised, converted or exchanged or (ii) the consideration to be paid upon such exercise, conversion or exchange per share of underlying Common Stock is less than or equal to the per share consideration for the Additional Stock which has given rise to the Conversion Price adjustment being calculated.

- (B) No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of (3) three years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (d)(i)(E)(3) and (d)(i)(E)(4) of this Section 6, no adjustment of such Conversion Price pursuant to this subsection (d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

- (C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.
- (D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.
- (E) In the case of the issuance (whether before, on or after the applicable Purchase Date) of any option to purchase or rights to subscribe for Common Stock, Convertible Securities or options to purchase or rights to subscribe for such Convertible Securities, except for Excluded Securities, the following provisions shall apply for all purposes of subsections (d)(i) and (d)(ii) of this Section 6:
  - (1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (to the extent then exercisable) of such options or rights shall be deemed to have been issued at the time such options were issued and for a consideration equal to the consideration (determined in the manner provided in subsections (d)(i)(C) and (d)(i)(D) of this Section 6), if any, received by the Corporation upon the issuance of such options plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.
  - (2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (to the extent then convertible or exchangeable) for any such Convertible Securities or upon the exercise of options to purchase or rights to subscribe for such Convertible Securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights

(excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections (d)(i)(C) and (d)(i)(D) of this Section 6).

- (3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such Convertible Securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.
- (4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such Convertible Securities, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Convertible Securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.
- (5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections (d)(i)(B)(1) and (2) of this Section 6 shall be appropriately adjusted to reflect any change, termination or expiration of the type



described in either subsection (d)(i)(E)(3) or (4) of this Section 6.

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection (d)(i)(E) of this Section 6) by the Corporation after the Purchase Date other than the following (collectively, the "Excluded Securities"):

- (A) Common Stock issued pursuant to a transaction described in subsection (d)(iii) of this Section 6,
- (B) shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock,
- (C) up to 100,000 shares of Common Stock issued or issuable upon exercise of warrants issued to banks or vendors and approved by the Board of Directors, or
- (D) Shares of Common Stock issued to Strategic Partners in connection with Strategic Alliances,
- (E) *Finder's Shares*,
- (F) *Reserved Affiliate Shares*,
- (G) Shares of Common Stock issued in connection with one or more acquisitions by the Corporation the purpose of which is to acquire all or substantially all of the assets or greater than 50% of the outstanding capital stock or voting rights of an entity that is not an Affiliate of the Corporation,
- (H) Shares issuable upon conversion of Common Stock Notes, or
- (I) Shares of Common Stock issued or issuable upon conversion or exchange of any convertible, exchangeable or exercisable securities referred to in any of the foregoing clauses (A) through (H).

(iii) In the event the Corporation shall at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion

or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price in effect immediately prior to such event shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each Series A Preferred Share shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection (d)(i)(E) of this Section 6.

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for in effect immediately prior to such event shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection (d)(iii) of this Section 6, then, in each such case for the purpose of this subsection 6(e), the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their Series A Preferred Shares are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 6 or in Section 2) provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of the Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 6 with respect to the rights of the holders of the Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 6 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 6 and in the taking of all such action as may be necessary or

appropriate in order to protect the Series A Conversion Rights of the holders of the Series A Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional share shall be issued upon the conversion of any Series A Preferred Share or Series A Preferred Shares. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one Series A Preferred Share by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 6, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a Series A Preferred Share.

(i) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Shares; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding Series A Preferred Shares, in addition to such other remedies as shall be available to the holders of Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including,

without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to these articles.

(k) Notices. Any notice required by the provisions of this Section 6 to be given to the holders of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at its address appearing on the books of the Corporation.

**Section 7. First Refusal Rights.**

(a) If the Corporation authorizes the issuance or sale of any Convertible Securities other than Excluded Securities, or any shares of Common Stock or any securities containing options or rights to acquire any shares of Common Stock (other than as a dividend on the outstanding Common Stock), the Corporation shall first offer to sell to each holder of Series A Preferred Stock a portion of such stock or securities equal to the quotient determined by dividing (1) the number of shares of Underlying Common Stock and Conversion Stock held by such holder by (2) the total number of shares of Underlying Common Stock and Common Stock of the Corporation then outstanding (assuming options, rights and Convertible Securities then outstanding have been exercised or converted into Common Stock). Each holder of Series A Preferred Stock shall be entitled to purchase such stock or securities at a price no less favorable and on terms no less favorable as such stock or securities are to be offered to any other Persons. The purchase price payable for the stock and securities offered to the holders of Series A Preferred Stock hereunder shall be payable in cash or, to the extent otherwise required hereunder, by notes issued by such holders.

(b) In order to exercise its purchase rights hereunder, each holder of Series A Preferred Stock must within fifteen (15) days after receipt of written notice from the Corporation describing in reasonable detail the stock or securities being offered, the purchase price thereof, the payment terms and such holder's percentage allotment, deliver a written notice to the Corporation describing its election hereunder.

(c) Upon the expiration of the offering period described above, the Corporation shall be entitled to sell such stock or securities which the holders of Series A Preferred Stock have not elected to purchase during the ninety (90) days following such expiration on the terms and conditions no more favorable to the purchasers thereof than those offered to such holders. Any stock or securities offered or sold by the Corporation after such ninety (90) days period must be reoffered to the holders of Series A Preferred Stock pursuant to the terms of this Section 7.

(d) As to each Series A Preferred Share, the right of first refusal set forth in this Section 7 shall not be applicable to (i) the issuance or sale of Excluded Securities, and (ii) the issuance or sale of any Convertible Securities or any shares of Common stock or any options or rights to acquire any shares of Common Stock which occurs after the date such Series A Preferred Shares have been converted into shares of Conversion Stock hereunder.

**Section 8. Restrictions.**

Except as expressly contemplated herein or in the Purchase Agreement, the Corporation shall not, without the approval of at least one director elected to the Corporation's Board of Directors under Section 5(b)(i):

(a) directly or indirectly declare, pay or accrue any dividends or make any distributions upon any of its Junior Securities at a rate equal to or greater than the rate at which dividends are paid on the Series A Preferred Stock pursuant to the terms hereof, except for dividends payable in shares of Common Stock issued upon the outstanding shares of Common Stock;

(b) create any new series or class or shares of capital stock which are senior to or on a parity with the Series A Preferred Stock with respect to the payment of dividends, redemption or distribution upon liquidation;

(c) become subject to, or permit any of its Subsidiaries to become subject to, (including, without limitation, by way of amendment to or modification of) any agreement or instrument which by its terms would (under any circumstances) restrict (i) the Corporation's right to perform the provisions of the Purchase Agreement, the Investor Rights Agreement, the Articles of Incorporation or the Corporation's bylaws (including, without limitation, provisions relating to the declaration and payment of dividends on and the purchase of Series A Preferred Stock and conversions of the Series A Preferred Stock);

(d) make any amendment or add any provision to the Articles of Incorporation or the Corporation's bylaws;

(e) increase or decrease the number of authorized shares of the Series A Preferred Stock or adversely affect or otherwise impair the rights or the relative preferences and priorities of the holders of the Series A Preferred Stock or the Underlying Common Stock under the Purchase Agreement, the Articles of Incorporation or the Corporation's bylaws;

(f) authorize, issue or enter into any agreement providing for the issuance (contingent or otherwise) of, (1) any notes or debt securities containing equity features (including, without limitation, any notes or debt securities convertible into or exchangeable for capital stock or other equity securities, issued in connection with the issuance of capital stock or other equity securities or containing profit participation features) which are senior to or on a parity with the Series A Preferred Stock with respect to the payment of dividends, redemptions, purchase or distributions upon liquidation or otherwise or (ii) any capital stock or other equity securities (or any securities convertible into or exchangeable for any capital stock or other equity securities) other than Excluded Securities;

(g) modify or reclassify any class or series of Common Stock into shares of capital stock which are senior to or on a parity with the Series A Preferred Stock with regard to the payment of dividends, redemption, purchase or distribution upon liquidation or otherwise;

(h) directly or indirectly redeem, purchase or otherwise acquire, or permit any Subsidiary to redeem, purchase or otherwise acquire, any of the Corporation's or any Subsidiary's capital stock or other equity securities (including, without limitation, warrants, options and other rights to acquire such capital stock or other equity securities) other than the Series A Preferred

Stock pursuant to the terms hereof except for, repurchases of Common Stock from employees, advisors, officers, directors, consultants and service providers of the Corporation and its Subsidiaries pursuant to arrangements approved by the Corporation's Board of Directors other than shares of Puridet (Asia) Limited;

(i) establish or acquire any Affiliates or Subsidiaries other than Wholly Owned Subsidiaries other than Dyadic sp. zoo;

(j) make any material change in the Corporation's business objectives, purposes or operations;

(k) assign, sell, lease, contribute or otherwise dispose of, or permit any Subsidiary to assign, sell, lease, contribute or otherwise dispose of, more than fifty percent (50%) of the consolidated assets of the Corporation and its Subsidiaries (computed on the basis of fair market value, determined by the Corporation's Board of Directors in its reasonable good faith judgment) in any transaction or series of related transactions (other than sales in the ordinary course of business);

(l) amend or modify any stock option plan or employee stock ownership plan in a material matter, adopt any new stock option plan or employee stock ownership plan or issue any shares of Common Stock to its or its Subsidiaries;

(m) enter into, amend, modify or supplement, or permit any Subsidiary to enter into, amend, modify or supplement, any agreement, transaction, commitment or arrangement with any of its or any Subsidiary's officers, directors, employees, stockholders or Affiliates or with any individual related by blood, marriage or adoption to any such individual or with any entity in which any such Person or individual owns a beneficial interest, except for customary employment arrangements and benefit programs on reasonable terms and except as otherwise expressly contemplated by the Purchase Agreement, other than purchases of shares of Puridet (Asia) Limited from officers or directors thereof,

(n) enter into any other line of business other than the business conducted by the Corporation as at the Closing Date;

(o) merge or consolidate with any Person or permit any Subsidiary to merge or consolidate with any Person (other than a Wholly Owned Subsidiary) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the securities having a majority of the voting power of the Corporation are disposed;

(p) create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, Indebtedness, except for Indebtedness incurred in the ordinary course of business;

(q) apply for or consent to the appointment of a receiver, trustee, administrator, manager or liquidator of it or any of its property or Subsidiaries or file a voluntary petition in bankruptcy or permit any Subsidiary to file a voluntary petition in bankruptcy or an answer admitting the material allegations of an involuntary petition filed against it or any Subsidiary;

(r) enter into Strategic Alliances with Strategic Partners (other than in connection with (i) Dyadic International, spoka z ograniczona odpowiedzialnoscia or (ii) Puridet (Asia) Limited);

(s) liquidate, dissolve or effect a recapitalization or reorganization in any form of transaction (including, without limitation, any reorganization into a limited liability corporation, a partnership or any other non corporate entity which is treated as a partnership for federal income tax purposes);

(t) create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any Liens other than Permitted Liens;

(u) amend any of the foregoing provisions (a) through (s) above, inclusive.

The restrictions set forth in this Section 8 shall terminate and be of no further force or effect upon the Corporation's consummation of a Qualified Public Offering.

**Section 9. Registration of Transfer Stock.**

The Corporation shall keep at its principal office or at the office of its transfer agent or legal counsel a register for the registration of the Series A Preferred Stock and the Common Stock. Upon the surrender of any certificate representing Series A Preferred Stock at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefore representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and, in the case of Series A Preferred Stock, dividends shall accrue on the Series A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Series A Preferred Stock represented by the surrendered certificate.

**Section 10. Replacement.**

Upon receipt of evidence reasonably satisfactory to the corporation of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Preferred Stock or Common Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and, in the case of Series A Preferred Stock, dividends shall accrue on the Series A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

**Section 11. Definitions.** The following capitalized terms, when used in these Amended and Restated Articles of Incorporation (whether in this ARTICLE THIRD (5) or elsewhere in these

Amended and Restated Articles of Incorporation), shall have the meanings set forth in this Section 11:

"Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise.

"Closing Date" means the date of the Closing under the Purchase Agreement.

"Common Stock" means, collectively, the Corporation's Common Stock, no par value per share, and any capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation.

"Common Stock Notes" has the meaning set forth in Section (2)(b) of this Article THIRD (5).

"First Closing of Third Round Offering" shall mean the first closing of the sale and purchase of investment units of the Corporation's Common Stock and Series B Preferred Stock, under and in accordance with the terms of the Corporation's Third Round Offering.

"Confidentiality and Inventions Assignment Agreements" shall mean the Confidentiality and Inventions Assignment Agreements as defined in the Purchase Agreement.

"Conversion Price" with respect to the Series A Preferred Stock has the meaning set forth in Section 6 of ARTICLE THIRD (5), and with respect to the Series B Preferred Stock has the meaning set forth in Section 3(a) of ARTICLE THIRD (6).

"Series A Conversion Rights" has the meaning set forth in Section 6 of ARTICLE THIRD (5).

"Series B Conversion Rights" has the meaning set forth in Section 3 of ARTICLE THIRD (6).

"Conversion Stock" means shares of the Corporation's Common Stock, provided that if there is a change such that the securities issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock are issued by an entity other than the Corporation or there is a change in the type or class of securities so issuable, then the term "Conversion Stock" shall mean one share of the security issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock, as the case may be, if such security is issuable in shares, or shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

"Convertible Securities" means any stock or securities directly or indirectly convertible into or exchangeable for Common Stock.



"Deemed Original Series B Purchase Price" shall have the meaning set forth in Section 3 of ARTICLE THIRD (6).

"Employment Agreements" shall mean the Employment Agreements, as amended as defined in the Purchase Agreement.

"Finder's Shares" shall mean shares of Common Stock reserved by the Corporation as of the date of issuance of the Series A Preferred Stock for issuance to the Finders upon the exercise of outstanding options in an amount not to exceed 65,000 shares.

"Finders" shall mean, collectively, Edward Feigeles, Charles Johnson, Andrew Malik and Seth Herbst.

"Indebtedness" means at a particular time, without duplication, (i) any indebtedness for borrowed money or issued in substitution for or exchange of indebtedness for borrowed money, (ii) any indebtedness evidenced by any note, bond, debenture or other debt security, (iii) any indebtedness for the deferred purchase price of property or services with respect to which a Person is liable, contingently or otherwise, as obligor or otherwise (other than trade payables and other current liabilities incurred in the ordinary course of business), (iv) any commitment by which a Person assures a creditor against loss (including, without limitation, contingent reimbursement obligations with respect to letters of credit), (v) any indebtedness guaranteed in any manner by a Person (including, without limitation, guarantees in the form of an agreement to repurchase or reimburse), (vi) any obligations under capitalized leases with respect to which a Person is liable, contingently or otherwise, as obligor, guarantor or otherwise, or with respect to which obligations a Person assures a creditor against loss, (vii) any indebtedness secured by a Lien on a Person's assets and (viii) any unsatisfied obligation for "withdrawal liability" to a "multiemployer plan" as such terms are defined under ERISA.

"Investors' Rights Agreement" means the Investors' Rights Agreement as defined in the Purchase Agreement.

"Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series A Preferred Stock.

"Liens" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including, without limitation, any conditional sale or other title retention agreement or lease in the nature thereof), any sale of receivables with recourse against the Corporation, any Subsidiary or any Affiliate, any filing or agreement to file a financing statement as debtor under the Uniform Commercial Code or any similar statute other than to reflect ownership by a third party of property leased to the Corporation or any Subsidiaries under a lease which is not in the nature of a conditional sale or title retention agreement, or any subordination arrangement in favor of another Person (other than any subordination arising in the ordinary course of business).

"Liquidation Value" of any Series A Preferred Share as of any particular date shall be equal to the sum of (i) the Original Purchase Price thereof and (ii) an amount equal to all accrued and unpaid dividends thereon.

"Liquidation Event" has the meaning set forth in Section 2 of ARTICLE THIRD (5).

"Original Purchase Price" has the meaning set forth in Section 1.1 of ARTICLE THIRD (5).

"Permitted Liens" means (i) tax liens with respect to taxes not yet due and payable or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established in accordance with generally accepted accounting principles, consistently applied; (ii) deposits or pledges made in connection with, or to secure payment of, utilities or similar services, workers, compensation, unemployment insurance, old age pensions or other social security obligations; (iii) purchase money security interests in any property acquired by the Corporation or any Subsidiary to the extent permitted by the Purchase Agreement; (iv) interests or title of a lessor under any lease permitted by the Purchase Agreement; (v) mechanics', material men's or contractors' liens or encumbrances or any similar lien or restriction for amounts not yet due and payable; (vi) easements, rights of way, restrictions and other similar charges and encumbrances not interfering with the ordinary conduct of the business of the Corporation and its Subsidiaries or detracting from the value of the assets of the Corporation and its Subsidiaries; and (vii) liens outstanding on the date of issuance of the Series A Preferred Stock which secure Indebtedness and which are described in the schedules to the Purchase Agreement.

"Person" means an individual, a partnership, a corporation, a limited liability corporation, a limited liability, an association, a joint stock corporation, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof

"Series A Preferred Share" has the meaning set forth in Section 1.1 of ARTICLE THIRD (5).

"Series B Preferred Share" has the meaning set forth in Section 1 of ARTICLE THIRD (6).

"Public Offering" means any offering by the Corporation of its capital stock or equity securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force.

"Purchase Agreement" means the Convertible Preferred Stock Purchase Agreement, dated as of May 25, 2001 by and among the Corporation and certain investors, whereby such investors purchased Series A Preferred Stock as such agreement may from time to time be amended in accordance with its terms.

"Put Closing Date" has the meaning set forth in Section 4(c) of ARTICLE THIRD (5).

"Put Notice" has the meaning set forth in Section 4(a) of ARTICLE THIRD (5).

"Put Option" has the meaning set forth in Section 4(a) of ARTICLE THIRD (5).

"Put Price" has the meaning set forth in Section 4(b) of ARTICLE THIRD (5).

"Qualified Public Offering" has the meaning set forth in Section 6(b) of ARTICLE THIRD (5).

"Reserved Affiliate Shares" shall mean shares of Common Stock reserved by the Corporation inclusive of shares currently reserved as of the date of issuance of the Series A Preferred Stock other than Finder's Shares for issuance to directors, employees, scientific advisors, officers, consultants and other qualified optionees upon the exercise of outstanding options which may be issued from time to time under such arrangements, contracts or plans, as approved by the Board of Directors prior to the Closing Date in an amount not to exceed ten percent (10%) (of such amount as exists immediately after the Closing) of outstanding shares of Common Stock (assuming the conversion of all shares of Series A Preferred Stock to Common Stock).

"Series A Transaction Documents" means, collectively, the Purchase Agreement and all documents executed or approved by Cooper Hill Partners, LLC in connection therewith, including, the Investor Rights Agreement, the Employment Agreements and the Confidentiality and Inventions Assignment Agreements.

"Strategic Alliances" shall mean transactions between the Corporation and Strategic Partners, involving any investments by Strategic Partners in exchange for capital stock or securities convertible into capital stock of the Corporation.

"Strategic Partners" shall mean biotechnology, chemical, agricultural or pharmaceutical companies, academic institutions or other organizations that do not, as their primary purpose, extend credit to or make investments in privately held or public companies.

"Subsidiary" means with respect to any Person, any corporation, limited liability corporation, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability corporation, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability corporation, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability corporation, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability corporation, partnership, association or other business entity. For purposes hereof, Puridet (Asia) Limited shall be deemed a Subsidiary of the Corporation notwithstanding that the Corporation currently has less than a majority of the total voting power.

"Third Round Offering" shall mean that certain private placement of \$8,000,000 of Investment Units of the Corporation pursuant to a Term Sheet dated April 1, 2004.

"Underlying Common Stock" means (i) the Common Stock issued or issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock, as the case may be, and (ii) any Common Stock issued or issuable with respect to the securities referred to in clause (i) above by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. For purposes of this Agreement, any Person who holds Series A Preferred Stock or Series B Preferred Stock shall be deemed to be the holder of the Underlying Common Stock obtainable upon conversion of the Series A Preferred Stock or Series B Preferred Stock, as the case may be, in connection with the transfer thereof or otherwise regardless of any restriction or limitation on the conversion of the Series A Preferred Stock or Series B Preferred Stock, such Underlying Common Stock shall be deemed to be in existence, and such Person shall be entitled to exercise the rights of a holder of Underlying Common Stock hereunder. As to any particular shares of Underlying Common Stock, such shares shall cease to be Underlying Common Stock when they have been (i) effectively registered under the Securities Act of 1933, (ii) distributed to the public through a broker, dealer or market maker pursuant to Rule 144 under the Securities Act (or any similar provision then in force), (iii) repurchased by the Corporation or any Subsidiary or (iv) distributed pursuant to Rule 144(k) under the Securities Act (or any similar provision then in force).

"Wholly Owned Subsidiary" means, with respect to any Person, a Subsidiary of which all of the outstanding capital stock or other ownership interests are owned by such Person or another Wholly Owned Subsidiary of such Person.

**Section 12. Amendment and Waiver.**

Notwithstanding anything to the contrary contained herein, no amendment, modification or waiver shall be binding or effective with respect to any provision of Sections 1 to 13 of this Article THIRD (5) or the Series A Transaction Documents without the prior written consent of the holders of a majority of the voting power of all Series A Preferred Stock outstanding at the time such action is taken, voting together as a single class, if the effect of such action is to change (a) the rate at which or the manner in which dividends on the Series A Preferred Stock accrue or the times at which such dividends become payable or the relative priorities of such dividends, (b) the amount payable upon exercise of the Put Option or the times at which exercise of the Put Option is to occur, (c) the amount payable to the holders of the Series A Preferred Stock upon a Liquidation Event or the time at which such payment is to occur or the relative priorities of such payments, (d) class voting of the stockholders of the Corporation, (e) the Conversion Price of the Series A Preferred Stock or the number of shares or class of stock into which the Series A Preferred Stock is convertible, (f) rights of first refusal of the holders of the Series A Preferred Stock and (g) the percentage required to approve any change described in clauses (a) through (f) above inclusive. No change in the terms hereof or of the Series A Transaction Documents described in clauses (a) through (f) above, inclusive, may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of a majority of the Series A Preferred Stock then outstanding.

**Section 13. Notices.**

Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, or by reputable overnight courier service, charges prepaid, and shall be deemed to have been given when so mailed or sent (i) to the Corporation, at its principal executive offices, with a copy to John S. Fletcher, Morgan, Lewis & Bockius LLP, 5300 First Union Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131 2339; and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder) (with, in the case of a notice to Mark A. Emalfarb, a copy to Robert S. Levin, Levin & Ginsburg Ltd., 180 North La Salle Street, 22 d Floor, Chicago, Illinois 60601).

(6) Preferences and Restrictions of Series B Preferred Stock. The rights, preferences, restrictions and other matters relating to the Series B Preferred Stock are as follows:

**Section 1     Dividends.**

When and as declared by the Corporation's Board of Directors and to the extent permitted under the Florida Business Corporation Act, the Corporation shall pay preferential dividends in cash to the holders of the Series B Preferred Stock as provided in this Section 1. When and as declared by the Board of Directors, dividends shall be paid on each share of the Series B Preferred Stock (each, a "Series B Preferred Share"), at the rate of eight percent (8%) per annum of the sum of \$0.675 (the "Deemed Original Series B Purchase Price"). Such dividends shall not accrue or cumulate if not paid or declared.

**Section 2     Liquidation.**

Upon any "Liquidation Event", the holders of Series B Preferred Stock shall be entitled to receive, on an as if converted basis pro rata with the holders of Common Stock, (i) all of the assets of the corporation remaining available for distribution, if any; or (ii) in the event shares of Series A Preferred Stock are outstanding, assets of the corporation in accordance with Section 2(c) of ARTICLE THIRD (5).

**Section 3     Voting Rights.**

The holder of each share of Series B Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series B Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as converted basis (after aggregating all shares into which Series B Preferred Shares held by each holder could be converted) shall be rounded to the nearest whole number (with one half being rounded upward). Without limiting the foregoing, the holder of each share of Series B Preferred Stock shall be entitled to vote with the holders of Common Stock, together as one class, for the matters provided in Section 5(b) of ARTICLE THIRD (5).

**Section 3. Conversion.**

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

(a) **Right to Convert.** At any time and from time to time, any holder of Series B Preferred Stock may convert all (but not less than all) of the Series B Preferred Stock (including any fraction of a Series B Preferred Share) held by such holder into Common Stock of the Company into a number of shares of Conversion Stock computed by multiplying the number of Series B Preferred Shares to be converted by the Deemed Original Series B Purchase Price of such Series B Preferred Share and dividing the result by the applicable Conversion Price then in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per Series B Preferred Share shall be the Deemed Original Series B Purchase Price thereof, resulting in a conversion ratio of one share of Common Stock for every one share of Series B Preferred Stock; provided, however, that the Conversion Price for the Series B Preferred Stock shall be subject to adjustment in the same manner as set forth in subsection (d) of Section 6 of ARTICLE THIRD (5), as though the term "Series A Preferred Stock" in such subsection (6) of ARTICLE THIRD (5) were references to "Series B Preferred Stock."

(b) **Automatic Conversion.** All of the outstanding Series B Preferred Stock shall be automatically converted to Common Stock at the then current Conversion Price upon the Completion of the Third Round Offering.

**Section 4 Other Provisions.**

(a) The provisions of Section 6(c), Sections 6(e)-(k) and Section 9 of ARTICLE THIRD (5) shall also apply to the Series B Preferred Stock as though the term "Series A Preferred Stock and Series B Preferred Stock" were substituted for the term "Series A Preferred Stock."

(b) The provisions of this ARTICLE THIRD (6) constitute the only provisions relating to the preferences, limitations and relative rights of the Series B Preferred Shares in relation to other classes or series of stock of the Company, and the Series B Preferred Shares shall enjoy none of the preferences, limitations or relative rights relating to the Series A Preferred Shares, except as expressly so provided in this ARTICLE THIRD (6).

(c) No shares of Series B Preferred Stock shall be issued if the First Closing of the Third Round Offering does not occur by June 30, 2004, or by such later date to which the Third Round Offering shall have been extended by the Corporation.

**ARTICLE FOURTH**

**Registered Office And Agent**

The street address of the corporation's registered office is:

1200 South Pine Island Road  
Plantation, Florida 33324

The name of the corporation's initial registered agent at that office is CT Corporation System.

#### **ARTICLE FIFTH**

##### **Incorporators**

The names and addresses of the incorporators are:

Michael A. Turano	208 S. LaSalle Street Chicago, Illinois 60604
Mary J. Janiszewski	208 S. LaSalle Street Chicago, Illinois 60604
Kathleen A. Rake	208 S. LaSalle Street Chicago, Illinois 6060

#### **ARTICLE SIXTH**

##### **Purpose And Powers**

The corporation is organized for the purpose of transacting any and all lawful business for which corporations may be incorporated under the Florida Business Corporation Act and under the laws of any jurisdiction in which the corporation may operate. The corporation shall have all lawful powers necessary or appropriate to conduct such business including, but not limited to, all corporate powers which corporations may have under the Florida Business Corporation Act.

#### **ARTICLE SEVENTH**

##### **Board Of Directors**

The number of directors constituting the board of directors shall be as provided from time to time in the bylaws.