

May-01-02

09:18am

From: 80118.1

305 577 1111

01

F-3

P98000057416

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.

(((H02000123198 2)))

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 : STEEL HECTOR & DAVIS
Account Number : 071541002004
Phone : (305) 577-4726
Fax Number : (305) 577-7001

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
2002 MAY - 1 PM 1:28

BASIC AMENDMENT

CYTURA CORP.

Certificate of Status	0
Certified Copy	1
Page Count	27
Estimated Charge	\$43.75

RECEIVED

02 MAY - 1 AM 9:40

DIVISION OF CORPORATIONS

Amended & Restated
Art

05/01/02 DC

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
CYTURA CORP.**

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
2002 MAY -1 PM 1:28

The following Second Amended and Restated Articles of Incorporation of Cytura Corp. (the "Corporation"), a corporation organized and existing under the laws of the State of Florida, were duly approved and adopted by written consent of the shareholders of the Corporation, upon the recommendation of the Board of Directors of the Corporation ("Board of Directors"), pursuant to Sections 607.1003 and 607.1007 of the Business Corporation Act of Florida (as in effect from time to time, the "Code"), as of the 30th day of April 2002.

ARTICLE I

The name of the Corporation is: **CYTURA CORP.**

ARTICLE II

The registered office of the Corporation shall be at 250 International Parkway, Suite 350, in the City of Heathrow, County of Seminole. The name of the registered agent at that address is Donna Mackenzie.

ARTICLE III

A. Classes of Stock. The Corporation is authorized to issue two classes of capital stock to be designated, respectively, "Common Stock" and "Preferred Stock". The total number of shares of capital stock authorized to be issued is 600,000,000 shares, of which 350,000,000 shares shall be Common Stock, \$0.001 par value, and 250,000,000 shares shall be Preferred Stock, of which 23,381,756 shares shall be designated as Series A Convertible Preferred Stock, \$0.001 par value (the "Series A Preferred"), and 85,000,000 shares shall be designated as Series B Convertible Preferred Stock, \$0.001 par value (the "Series B Preferred" and together with the Series A Preferred and any other class of preferred stock, the "Preferred Stock").

B. Designations. The Preferred Stock may be issued from time to time by the Board of Directors as shares of one or more series. The description of shares of Series A Preferred and Series B Preferred are as set forth in Section C of this Article III. The description of shares of each other series of Preferred Stock, including any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption shall be as set forth in resolutions adopted by the Board of Directors, and articles of amendment shall be filed with the Florida Secretary of State as required by law to be filed with respect to issuance of such Preferred Stock, prior to the issuance of any shares of such series.

H02000123198 2

Subject to the limitations and provisions set forth in these Second Amended and Restated Articles of Incorporation, the Board of Directors is expressly authorized, at any time, by adopting resolutions providing for the issuance of, or providing for a change in the number of, shares of any particular series of Preferred Stock (other than the Series A Preferred and Series B Preferred) and, if and to the extent from time to time required by law, by filing articles of amendment which are effective without shareholder action: (i) to increase or decrease the number of shares included in each series of Preferred Stock (other than the Series A Preferred and Series B Preferred), or (ii) to establish in any one or more respects the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms and conditions of redemption relating to the shares of each such series. Notwithstanding the foregoing, the Board of Directors shall not be authorized to change the right of holders of the Common Stock of the Corporation to vote one vote per share on all matters submitted for shareholder action. Subject to the provisions of Subsection C.6 herein, the authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, establishment of the following:

(i) the number of shares constituting that series and the distinctive designation of that series;

(ii) the annual dividend rate, if any, on shares of such series, the times of payment and the date from which dividends shall be accumulated, if dividends are to be cumulative;

(iii) whether the shares of such series shall be redeemable and, if so, the redemption price and the terms and conditions of such redemption;

(iv) the obligation, if any, of the Corporation to redeem shares of such series pursuant to a sinking fund;

(v) whether shares of such series shall be convertible into, or exchangeable for, shares of stock of any other class or classes and, if so, the terms and conditions of such conversion or exchange, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(vi) whether the shares of such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the extent of such voting rights;

(vii) the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding-up of the Corporation; and

(viii) any other relative rights, powers, preferences, qualifications, limitations or restrictions thereof relating to such series.

The shares of Preferred Stock of any one series shall be identical with each other in such series in all respects except as to the dates from and after which dividends thereon shall cumulate, if cumulative.

Subject to all of the rights of the Preferred Stock as expressly provided herein, by law or by the Board of Directors pursuant to this Article III, the Common Stock of the Corporation shall possess all such rights and privileges as are afforded to capital stock by applicable law in the absence of any express grant of rights or privileges in the Corporation's Articles of Incorporation, including, but not limited to, the following rights and privileges:

(i) dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the Corporation legally available for the payment of dividends;

(ii) the holders of Common Stock shall have the right to vote for the election of directors and on all other matters requiring shareholder action, each share being entitled to one vote; and

(iii) upon the voluntary liquidation, dissolution or winding-up of the Corporation, the net assets of the Corporation available for distribution shall be distributed pro-rata to the holders of the Common Stock in accordance with their respective rights and interest.

C. Rights, Preferences and Restrictions of the Series A Preferred and Series B Preferred.

1. Dividends.

(a) *Common Stock.* Subject to Subsection C.1(e) below, dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the Corporation legally available therefor.

(b) *Series A Preferred.* The holders of Series A Preferred shall be entitled to receive dividends, on a *pari passu* basis with dividends paid on Series B Preferred and prior and in preference to dividends paid on Common Stock, at the rate of eight percent (8.0%) per share (based on the Original Series A Issue Price as adjusted for any stock dividends, combinations, or splits with respect to such shares) per annum, accrued daily and on a cumulative basis from the actual date of original issue of each share of Series A Preferred (the "Series A Original Issue Date"), whether or not declared, payable out of funds legally available therefor, but payable only when declared by the Board of Directors or as otherwise specified herein.

(c) *Series B Preferred.* The holders of Series B Preferred shall be entitled to receive dividends, on a *pari passu* basis with dividends paid on Series A Preferred and prior and in preference to dividends paid on Series A Preferred and

Common Stock, at the rate of eight percent (8.0%) per share (based on the Original Series B Issue Price as adjusted for any stock dividends, combinations, or splits with respect to such shares) per annum, accrued daily and on a cumulative basis from the actual date of original issue of each share of Series B Preferred (the "Series B Original Issue Date"), whether or not declared, payable out of funds legally available therefor, but payable only when declared by the Board of Directors or as otherwise specified herein.

(d) In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series A Preferred and Series B Preferred in an amount equal per share (on an as-if converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(e) Unless otherwise approved by a majority of the Series A Preferred and Series B Preferred (voting together as a single class), no dividends may be paid with respect to the Common Stock so long as any shares of Series A Preferred or Series B Preferred are issued and outstanding.

2. Liquidation Preference.

(a) Preferential Amounts. In the event of any liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), either voluntary or involuntary,

(i) the holders of Series B Preferred shall, at their election, be entitled to receive, on a *pari passu* basis with the holders of Series A Preferred and prior and in preference to any distribution to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of (A) two times (2x) the original Series B issue price of \$.05 for each outstanding share of Series B Preferred ("Original Series B Issue Price") and (B) an amount equal to accrued but unpaid dividends on each such share; and

(ii) the holders of Series A Preferred shall, at their election, be entitled to receive, on a *pari passu* basis with the holders of Series B Preferred and prior and in preference to any distribution to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of (A) \$.3037 for each outstanding share of Series A Preferred (the "Original Series A Issue Price") and (B) an amount equal to accrued but unpaid dividends on each such share.

If upon the occurrence of such Liquidation Event, the assets and funds thus distributed among the holders of the Series A Preferred and Series B Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire remaining assets and funds of the Corporation legally available for distribution shall first be distributed ratably among the holders of the Series A Preferred and Series B Preferred in proportion to the preferential amount such holder is otherwise entitled to receive.

(b) Additional Preference. Upon the completion of the distribution required by subparagraph (a) of this Subsection 2, any additional assets of the Corporation available for distribution to shareholders shall be distributed among the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (on an as if converted basis). Nothing contained herein shall prevent the holders of Series A Preferred or Series B Preferred from converting to Common Stock upon the occurrence of a Liquidation Event.

(c) Deemed Liquidation Event. For purposes of this Subsection 2, a Liquidation Event shall be deemed to be occasioned by, or to include, any of the following (a "Sale or Merger"): (i) the merger or consolidation of the Corporation into or with another company or entity in which the shareholders of the Corporation immediately preceding such merger or consolidation (solely by virtue of their shares or other securities of the Corporation) shall own less than fifty percent (50%) of the voting securities of the surviving corporation; (ii) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a bona fide lender), whether in a single transaction or pursuant to a series of related transactions or plan, of all or substantially all of the assets of the Corporation (including the capital stock of subsidiaries) and its subsidiaries taken as a whole; (iii) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a bona fide lender), whether in a single transaction or pursuant to a series of related transactions, of all or substantially all of the assets of the subsidiaries of the Corporation, the assets of which constitute all or substantially all of the assets of the Corporation and such subsidiaries taken as a whole or (iv) the sale by one or more holders of Company equity securities, in an aggregate amount in excess of 50% of the Company's capital stock on a fully-diluted basis (whether in one or a series of related transactions).

(d) Non-cash Distribution. If any of the assets of the Corporation are to be distributed other than in cash under this Subsection 2 or for any purpose, then the Board of Directors of the Corporation shall promptly engage an independent appraiser to determine the value of the assets to be distributed to the holders of the Preferred Stock and Common Stock. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of Preferred Stock and Common Stock of the appraiser's valuation. Notwithstanding the above, any securities to be distributed to the shareholders shall be valued as follows:

(i) If traded on a securities exchange, 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) business days prior to the closing of the transaction;

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) business days prior to the closing of the transaction; and

H02000123198 2

(iii) 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 a majority of the outstanding shares of the Series A Preferred and Series B Preferred (voting together as a single class), provided that if the Corporation and the holders of a majority of the outstanding shares of the Series A Preferred and Series B Preferred are unable to reach agreement, then by independent appraisal by an investment banker. The investment banker shall be hired and paid by the Corporation and acceptable to the holders of a majority of the outstanding shares of Series A Preferred and Series B Preferred (voting together as a single class).

3. Voting Rights.

(a) General. Except as specifically set forth herein, including in Section 3(b) and Section 6, or as otherwise required by law or as provided in any agreement among the shareholders of the Corporation, the holder of each share of Series A Preferred and Series B Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series A Preferred and Series B Preferred would be convertible on the record date for determination of the shareholders entitled to vote, or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited, and shall otherwise have voting rights and powers equal to the voting rights and powers of the Common Stock. The Series A Preferred and Series B Preferred will vote together as a single class with the Common Stock, except as specifically set forth herein or as may be required by law or as provided in any agreement among the shareholders of the Corporation.

(b) Notice. Each holder of a share of Series A Preferred and Series B Preferred shall be entitled to receive the same prior notice of any shareholders' meeting as provided to the holders of Common Stock and Preferred Stock in accordance with the Bylaws of the Corporation, as well as prior notice of all shareholder actions to be taken by legally available means in lieu of meeting, and shall vote with holders of the Common Stock and Preferred Stock upon any matter submitted to a vote of shareholders, except those matters required by law, or by the terms hereof, to be submitted to a class vote of the holders of Series A Preferred and/or Series B Preferred. Fractional votes shall not, however, be permitted, and any fractions shall be disregarded in computing voting rights.

(c) Board of Directors. The authorized number of directors shall be seven (7) or such other number as may be fixed from time to time by a resolution adopted by the unanimous approval of the Board of Directors or the consent of holders of a majority of the Series A Preferred and Series B Preferred shares voting together as a single class. The election of directors shall be subject to the terms set forth in that certain Amended and Restated Voting Agreement by and among the Corporation and certain of its Shareholders, dated of even date herewith (the "Voting Agreement"). In the event that a vacancy shall occur on the Board of Directors, the number of directors shall be reduced until a new

director or directors shall be elected to such position or positions as provided in the Voting Agreement.

4. Conversion. The holders of the Series A Preferred and Series B Preferred have conversion rights as follows (the "Conversion Rights"):

(a) Optional. Each share of Series A Preferred and Series B Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock into Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the Series A Conversion Rate (determined as provided in Subsection (4)(c) below) by the number of shares of Series A Preferred being converted. The number of shares of Common Stock to which a holder of Series B Preferred shall be entitled upon conversion shall be the product obtained by multiplying the Series B Conversion Rate (determined as provided in Subsection (4)(c) below) by the number of shares of Series B Preferred being converted. Any conversion under this Subsection (4)(a) shall be deemed to have been made immediately prior to the close of business on the date of the surrender of the shares of Series A Preferred or Series B Preferred, as applicable, to be converted in accordance with the procedures described in Subsection (4)(d) below.

(b) Automatic.

(i) Each class of Series A Preferred and Series B Preferred shall have the right to convert all of its shares of Preferred Stock to Common Stock after a class vote. Should a majority of the holders of the then outstanding shares of Series A Preferred or Series B Preferred (voting as separate classes) so elect, by delivery of written notice or notices to the Corporation, each and every outstanding share of Series A Preferred or Series B Preferred, as applicable, shall automatically be converted into Common Stock at the then Series A Conversion Rate or Series B Conversion Rate, as applicable. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of receipt of the written notice described above necessary to effect such conversion. Such conversion shall be automatic, without need for any further action by such holders of shares of Series A Preferred or Series B Preferred, as applicable, and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Series A Preferred or Series B Preferred, as applicable, so converted are surrendered to the Corporation in accordance with the procedures described in Subsection (4)(d) below.

(ii) The Corporation shall notify each holder of Series A Preferred and Series B Preferred at least thirty (30) days prior to the anticipated effective date of a registration statement filed by the Corporation under the federal

Securities Act of 1933, as amended, covering a Qualified Public Offering (as defined below). Upon the closing of, but effective immediately prior to, the first sale in a Qualified Public Offering, each and every share of outstanding Series A Preferred and Series B Preferred held by such holders shall automatically be converted into Common Stock at the then effective Series A Conversion Rate or Series B Conversion Rate, as applicable. Such conversion shall be automatic, without need for any further action by the holders of shares of Series A Preferred or Series B Preferred and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Series A Preferred and Series B Preferred so converted are surrendered to the Corporation in accordance with the procedures described in Subsection (4)(d) below. A "Qualified Public Offering" shall mean a firm commitment underwritten offering of Common Stock to the public pursuant to a registration statement filed with the Securities and Exchange Commission under the Securities Act of 1993, as amended, at a public offering price that results in the Corporation receiving proceeds of at least \$30,000,000, net of underwriters' commissions and expenses, at a per share price equal to at least three times (3x) the Original Series A Issue Price (as adjusted for any stock dividends, combinations, or splits with respect to such shares) and that gives the Corporation an implied \$150,000,000 pre-money valuation.

(iii) No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred and Series B Preferred and any shares of Series A Preferred and Series B Preferred surrendered for conversion that would otherwise result in a fractional share of Common Stock shall be redeemed at the then effective Series A Conversion Price per share or the then effective Series B Conversion Price, as applicable, payable as promptly as possible when funds are legally available therefor.

(c) Conversion Rate. Subject to the provisions of this Subsection (4), (i) the "Series A Conversion Rate" in effect at any time with respect to the Series A Preferred shall be the quotient obtained by dividing the Original Series A Issue Price by the Series A Conversion Price (as defined in Subsection (4)(g) hereof) and (ii) the "Series B Conversion Rate" in effect at any time with respect to the Series B Preferred shall be the quotient obtained by dividing the Original Series B Issue Price by the Series B Conversion Price (as defined in Subsection (4)(g) hereof).

(d) Mechanics of Conversion. Upon the conversion of the Series A Preferred and/or Series B Preferred, as applicable, pursuant to Subsections (4)(b)(i) or (ii) above, the Corporation shall promptly send written notice thereof, by registered or certified mail return receipt requested and postage prepaid, by hand delivery or by overnight delivery, to each holder of record of Series A Preferred and Series B Preferred, as applicable, at his or its address then shown on the records of the Corporation, which notice shall state that certificates evidencing shares of Series A Preferred and Series B Preferred, as applicable, must be surrendered at the office of the

Corporation (or of its transfer agent for the Common Stock, if applicable) in the manner described in this Subsection (4)(d). Before any holder of Series A Preferred or Series B Preferred, as applicable, shall be entitled to receive certificates representing the shares of Common Stock into which shares of Series A Preferred and Series B Preferred, as applicable, are converted in accordance with Subsections (4)(a) or (4)(b) above, such holder shall surrender the certificate or certificates for such shares of Series A Preferred or Series B Preferred, as applicable, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock and shall give written notice to the Corporation at such office of the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued, if different from the name shown on the books and records of the Corporation. Said conversion notice shall also contain such representations as may reasonably be required by the Corporation to the effect that the shares to be received upon conversion are not being acquired and will not be transferred in any way that might violate the then applicable securities laws. The Corporation shall, as soon as practicable thereafter and in no event later than thirty (30) days after the delivery of said certificates, issue and deliver at such office to such holder of Series A Preferred or Series B Preferred, as applicable, or to the nominee or nominees of such holder as provided in such notice, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion pursuant to Subsections (4)(a) or (4)(b) shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of the effective date of conversion specified in such section. All certificates issued upon the exercise or occurrence of the conversion shall contain a legend governing restrictions upon such shares imposed by law or agreement of the holder or his or its predecessors. Upon conversion pursuant to Subsections (4)(a) or (4)(b), the Corporation shall pay to the holder of such share of converted Preferred Stock, all accrued but unpaid dividends.

(e) Adjustment for Subdivisions or Combinations of Common Stock. In the event the Corporation at any time or from time to time after the Series A Original Issue Date or Series B Original Issue Date, as applicable, effects a subdivision or combination of the outstanding Common Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of the outstanding Series A Preferred and Series B Preferred, then and in each such event the Series A Conversion Price and the Series B Conversion Price (and the corresponding Series A Conversion Rate and Series B Conversion Rate) shall be increased or decreased proportionately.

(f) Adjustments for Distributions and Common Stock Equivalent. In the event that (subject to Subsection (4)(g)(v) hereof) the Corporation at any time or from time to time after the Series A Original Issue Date or Series B Original Issue Date, as applicable, shall make or issue, or fix a record date for 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 additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by

such holder of such Common Stock Equivalents for the additional shares of Common Stock, and without a proportionate and corresponding dividend or other distribution to holders of Series A Preferred and Series B Preferred, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents shall be deemed, for purposes of this Subsection (4)(f), to be issued and outstanding as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date. In each such event the Series A Conversion Price and Series B Conversion Price shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price and Series B Conversion Price, as applicable, by a fraction,

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding or deemed to be issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(ii) the denominator of which shall be the total number of shares of Common Stock (x) issued and outstanding or deemed pursuant to the terms hereof to be issued and outstanding (not including any shares described in clause (y) immediately below), immediately prior to the time of such issuance or the close of business on such record date, plus (y) the number of shares of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents; provided, however, that (i) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price and Series B Conversion Price (and the corresponding Series A Conversion Rate and Series B Conversion Rate) shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price and Series B Conversion Price (and the corresponding Series A Conversion Rate and Series B Conversion Rate) shall be adjusted pursuant to this Subsection (4)(f)(ii) as of the time of actual payment of such dividend or distribution; or (ii) if such Common Stock Equivalents provide, with the passage of time or otherwise, for any decrease in the number of shares of Common Stock issuable upon conversion or exercise thereof (or upon the occurrence of a record date with respect thereto), the Series A Conversion Price and Series B Conversion Price (and the corresponding Series A Conversion Rate and Series B Conversion Rate) computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall upon any such decrease becoming effective, be recomputed to reflect such decrease insofar as it affects the rights of conversion or exercise of the Common Stock Equivalents then outstanding; or (iii) upon the expiration of any rights of conversion or exercise under any unexercised Common Stock Equivalents, the Series A Conversion Price and Series B Conversion Price (and the corresponding Series A Conversion Rate and Series B Conversion Rate) computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto),

and any subsequent adjustments based thereon, shall upon such expiration, be recomputed as if the only additional shares of Common Stock issued were the shares of such stock, if any, actually issued upon the conversion or exercise of such Common Stock Equivalents; or (iv) in the event of issuance of Common Stock Equivalents that expire by their terms not more than sixty (60) days after the date of issuance thereof, no adjustments of the Series A Conversion Price or Series B Conversion Price (or the corresponding Series A Conversion Rate or Series B Conversion Rate) shall be made until the expiration or exercise of all such Common Stock Equivalents, whereupon the adjustment otherwise required by this Subsection (4)(f) shall be made in the manner provided herein.

(g) Adjustment of Conversion Rate for Diluting Issues.

(i) Except as otherwise adjusted as provided herein, the Series A Conversion Price shall be equal to the Original Series A Issue Price (the "Series A Conversion Price") and the Series B Conversion Price shall be equal to the Original Series B Issue Price (the "Series B Conversion Price"). Except as otherwise provided in this Subsection (4)(g), in the event, and each time as, the Corporation sells or issues any Additional Shares of Common Stock following the Series A Original Issue Date or Series B Original Issue Date, as applicable, at a per share consideration (as defined below) less than the Series A Conversion Price or Series B Conversion Price, as applicable, in effect immediately prior to such issuance, then the Series A Conversion Price and Series B Conversion Price, as applicable, shall be adjusted concurrently with such issuance to an amount equal to such per share consideration, and the Series A Conversion Rate and Series B Conversion Rate, as applicable, shall be appropriately adjusted.

For purposes of the foregoing, the aggregate per share consideration with respect to the sale or issuance of a share of Common Stock shall be the price per share received by the Corporation, prior to the payment of any expenses, commissions, discounts and other applicable costs. With respect to the sale or issuance of Common Stock Equivalents that are convertible into or exchangeable for Common Stock without further consideration, the per share consideration shall be determined by dividing the minimum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents. With respect to the issuance of other Common Stock Equivalents, the per share consideration shall be determined by dividing the minimum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents plus the total consideration receivable by the Corporation upon the conversion or exercise of such Common Stock Equivalents. The issuance of Common Stock or Common Stock Equivalents for no consideration shall be deemed to be an issuance at a per share consideration of \$.01. In connection with the sale or issuance of

H02000123198 2

Common Stock and/or Common Stock Equivalents for non cash consideration, the amount of consideration shall be determined by the Board of Directors and the holders of a majority of outstanding Series A Preferred and Series B Preferred (voting together as a single class).

As used herein, "Additional Shares of Common Stock" shall mean either shares of Common Stock issued, with respect to such adjustments to be made to the Series A Conversion Price and the Series B Conversion Price, as applicable (and the corresponding Series A Conversion Rate and Series B Conversion Rate), subsequent to the applicable Original Issue Date, or, with respect to the issuance of Common Stock Equivalents, the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable in exchange for, upon conversion of, or upon exercise of such Common Stock Equivalents.

(ii) Upon each issuance of Common Stock Equivalents that are exchangeable without further consideration into Common Stock for a per share consideration less than the Series A Conversion Price or Series B Conversion Price as in effect on the date of such issuance, the Series A Conversion Price and Series B Conversion Price, as applicable, shall be adjusted as provided in paragraph (i) of this Subsection (4)(g) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of the Common Stock Equivalents, and the aggregate consideration received by the Corporation for such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(iii) Upon each issuance of Common Stock Equivalents other than those described in paragraph (ii) of this Subsection (4)(g) for a per share consideration less than the Series A Conversion Price or Series B Conversion Price as in effect on the date of such issuance, the Series A Conversion Price and Series B Conversion Price, as applicable, shall be adjusted as provided in paragraph (i) of this Subsection (4)(g) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of such Common Stock Equivalents, and the aggregate consideration received and receivable by the Corporation on conversion or exercise of such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(iv) Once any Additional Shares of Common Stock have been treated as having been issued for the purpose of this Subsection (4)(g), they shall be treated as issued and outstanding shares of Common Stock whenever any subsequent calculations must be made pursuant hereto; provided that on the expiration of any options, warrants or rights to purchase Additional Shares of Common Stock, the termination of any rights to convert or exchange for Additional Shares of Common Stock, or the expiration of any options or rights related to such convertible or exchangeable securities on account of which an adjustment in the Series A Conversion Price and Series B Conversion Price has been made previously pursuant to this Subsection (4)(g), such

Series A Conversion Price and Series B Conversion Price, as applicable, shall forthwith be readjusted to the Series A Conversion Price and Series B Conversion Price, as applicable, as would have been obtained had the adjustment made upon the issuance of such options, warrants, rights, securities or options or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options, warrants or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(v) The foregoing notwithstanding, no adjustment of the Series A Conversion Price or Series B Conversion Price (and the corresponding Series A Conversion Rate and Series B Conversion Rate) shall be made pursuant to this Subsection (4)(g) as a result of:

(w) any shares of Common Stock issued upon the conversion of shares of Series A Preferred or Series B Preferred;

(x) any shares of Common Stock issued pursuant to which the Series A Conversion Price and Series B Conversion Price (and the corresponding Series A Conversion Rate and Series B Conversion Rate) are adjusted under Subsections (e) or (f) of this Subsection (4);

(y) any shares of Common Stock issued pursuant to the exchange, conversion or exercise of any Common Stock Equivalents that were outstanding on the Series A Original Issue Date; or

(z) up to 6,901,501 shares of Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events) issued pursuant to options, warrants or rights that have been granted prior to the Series B Original Issue Date or that may be granted at any time after the Series B Original Issue Date to purchase shares of Common Stock in favor of employees, directors, officers or consultants of the Corporation or any subsidiary thereof pursuant to *bona fide* employee stock option plans created in accordance with Section 422 of the Internal Revenue Code of 1986, as amended, or similar subsequent legislation or pursuant to a non-statutory stock option plan or non-statutory stock option agreements (any such stock option plan or agreement described in this clause (z) being referred to as an "Authorized Incentive Plan").

(h) De Minimis Adjustments. No adjustment to the Series A Conversion Price or Series B Conversion Price (and, thereby, the Series A Conversion Rate and Series B Conversion Rate) shall be made if such adjustment would result in a change in the Series A Conversion Price or Series B Conversion Price, as applicable, of less than \$.01. Any adjustment of less than \$.01 that is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment that, on a cumulative basis, amounts to an adjustment of \$.01 or more in the Series A Conversion Price or Series B Conversion Price.

(i) No Impairment. Without the prior written consent of a majority of the holders of the Series A Preferred and Series B Preferred (voting together as a single class), the Corporation shall not, by amendment of its Articles of Incorporation or Bylaws or through any reorganization, 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 shall at all times in good faith assist in the carrying out of all the provisions of this Subsection 4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred and Series B Preferred against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price and Series B Conversion Price pursuant to this Subsection 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and cause independent public accountants selected by the Corporation to verify such computation and prepare and furnish to each holder of Series A Preferred and Series B Preferred, as applicable, 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 a holder of Series A Preferred or Series B Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series A Conversion Price and Series B Conversion Price (and the corresponding Series A Conversion Rate and Series B Conversion Rate) at that time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at that time would be received upon the conversion of Series A Preferred and Series B Preferred.

(k) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities other than Series A Preferred and Series B Preferred for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any Common Stock Equivalents or 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 and Series B Preferred, at least twenty (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 rights, and the amount and character of such dividend, distribution or rights.

(l) 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 shares of the Series A Preferred and Series B Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred and Series B Preferred; and if at any time the number of authorized but unissued shares of Common Stock shall be insufficient to effect the

conversion of all then outstanding shares of the Series A Preferred and Series B Preferred, the Corporation shall 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 purpose.

5. Redemption. Subject to Section 6(b) hereof, the Corporation shall at any time on or after January 15, 2007, upon the receipt of written notice or notices delivered to the Corporation by the holders of a majority of the then outstanding shares of Series A Preferred or Series B Preferred (voting as separate classes) electing to cause a redemption of such holders' shares of Series A Preferred Stock or Series B Preferred, as applicable (the "Electing Holders"), and assuming that neither a Sale or Merger of the Corporation nor an underwritten public offer and sale of Common Stock to the public at a Qualified Public Offering has been effected prior to such date, redeem all, or any portion, of the then outstanding shares of Series A Preferred and Series B Preferred, as applicable, held by such Electing Holders and other participating holders of Series A Preferred and Series B Preferred, as applicable, by paying in cash to the holders thereof in respect of each such share the Redemption Price (defined below), with one-half of such payment due sixty (60) days after receipt of such notice of redemption and one-half of such payment due on the first anniversary of the date of receipt of such notice of redemption. Upon receipt of notice from the Electing Holders, the Corporation shall within five (5) business days provide written notice to all other holders of Preferred Stock of the Electing Holders election so that such holders may elect to participate in the redemption.

The price payable for each redeemed share (the "Redemption Price") of Preferred Stock shall be equal to: (i) in the case of Series A Preferred, the greater of (A) the Appraised Value (as defined below) of each such share as of the date of the request for redemption or (B) the Original Series A Issue Price plus a per annum amount for the period such share has been issued and outstanding equal to seventeen and 9/10ths percent (17.9%) (accrued on a daily basis from the Series A Original Issue Date and calculated on a simple return basis) of the Original Series A Issue Price, prorated for any partial year; and (ii) in the case of Series B Preferred, the greater of (A) the Appraised Value (as defined below) of each such share as of the date of the request for redemption or (B) the Original Series B Issue Price plus a per annum amount for the period such share has been issued and outstanding equal to seventeen and 9/10ths percent (17.9%) (accrued on a daily basis from the Series B Original Issue Date and calculated on a simple return basis) of the Original Series B Issue Price, prorated for any partial year.

The "Appraised Value" shall be the fair market value of such shares, as established by the Board of Directors in good faith following such request for redemption (which Appraised Value shall not include a discount for minority ownership interest or illiquidity), and each holder of the Series A Preferred and Series B Preferred shall be notified in writing of such value upon receipt by the Corporation of a request for redemption. If, however, any Electing Holders shall give the Corporation written notice prior to the scheduled redemption that he, it or they disagree with the value placed upon the Series A Preferred Stock, then the Electing Holders and the Corporation shall attempt to agree upon an Appraised Value. Should the Electing Holders and the Corporation be

unable to agree during the twenty (20)-day period immediately following the giving of the written notice of such disagreement as to the Appraised Value without the employment of appraisers, then the Board of Directors and the Electing Holders shall mutually agree on an independent appraiser to determine the value of the Series A Preferred Stock and Series B Preferred; provided, however, that if the parties fail to agree on an independent appraiser, then the parties agree that the Atlanta, Georgia office of the American Arbitration Association shall be employed to choose an appraiser (the "Independent Appraiser"), and such Independent Appraiser shall promptly appraise such shares to be redeemed as of the date of the scheduled redemption. The appraisers shall not discount the shares of Series A Preferred and Series B Preferred for minority ownership interest or illiquidity. The Redemption Date shall be extended as necessary until the Independent Appraiser determines the Appraised Value. All costs of any appraisal process pursuant to this Section in determining the Appraised Value shall be paid one-half by the Corporation and one-half by the Electing Holders.

On or before the date of a scheduled redemption, each holder of shares required to be redeemed shall surrender the certificate representing such shares to the Corporation and shall receive payment of the Redemption Price in cash. If less than all the shares represented by a surrendered certificate are redeemed, the Corporation shall issue a new certificate representing the unredeemed shares.

The right to redemption established by this Subsection (5) shall be deemed absolute and vested upon the occurrence of the conditions specified herein; however, actual redemption under this Subsection (5) shall be subject to the legal availability of funds and, to the extent delayed, shall occur as soon thereafter as and when funds are legally available therefor, with interest at the per annum rate equal to the rate of interest published as the "Prime Rate," as of the date such redemption payment was due and payable, appearing in the "Money Rates" section of the *Wall Street Journal, Eastern Edition*, or any successor to such section plus two percent (2%) per annum, for the period of each delay.

6. Protective Provisions.

Actions Requiring Majority Approval of Series A Preferred and Series B Preferred. In addition to any other rights provided by law, so long as at least fifteen percent (15%) of the originally issued shares of Series A Preferred or Series B Preferred are then outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of these Second Amended and Restated Articles of Incorporation, without first obtaining the affirmative vote or written consent of the holders of a majority of the total number of shares of Series A Preferred and Series B Preferred outstanding (voting together as a single class and on an as-converted basis), the Corporation shall not, directly or indirectly, in one or more series of transactions:

H02000123198 2

(i) assume, guarantee, endorse or otherwise become directly or contingently liable for any loan obligation or funded indebtedness in excess of an aggregate of \$1,000,000;

(ii) create, incur, assume or suffer to exist any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance (including the lien or security title of conditional vendor) or any nature (other than ad valorem taxes) in excess of \$1,000,000, upon or with respect to any of its or any subsidiary's properties of notes, or accounts receivable, other than such mortgages, deeds, pledges, liens, security interest, charges and encumbrances which presently exist;

(iii) pay any dividends with respect to any class of capital stock of the Corporation;

(iv) repurchase or redeem or permit any stock ownership plan or similar plan to purchase any shares of capital stock (excluding shares repurchased from employees upon the termination of their employment as approved by a majority of the Board of Directors, including the directors designated by the holders of the Series A Preferred and Series B Preferred as set forth in Section 1.1(b) and (c) of the Voting Agreement);

(v) increase or decrease the authorized number of shares of the Series A Preferred or Series B Preferred;

(vi) issue any capital securities of the Corporation, except for the grant of employee options not to exceed, in the aggregate, 6,901,501 shares of Common Stock;

(vii) create, authorize or issue, or increase the authorized amount of, any shares or class or series of capital stock of the Corporation or any other obligation, instrument or security, or any obligation, instrument or security that is convertible into any capital security and shall also require majority approval of the Corporation's Board of Directors (including the directors designated by the holders of the shares of Series A Preferred and Series B Preferred as set forth in Section 1.1(b) and (c) of the Voting Agreement) for the Corporation to designate a new series of Preferred Stock; regardless of whether any such creation, authorization or increase shall be by means of amendment to the Articles of Incorporation, or by merger, consolidation or otherwise;

(viii) permit any subsidiary or affiliate of the Corporation to sell or issue any capital stock;

(ix) increase the number of shares of capital stock that are available for option grants to officers, directors, employees, consultants or others above 6,901,501 shares of Common Stock;

H02000123198 2

(x) sell, assign, lease or otherwise dispose of any of its material assets or those of any subsidiary, including its receivables, other than (a) sales, assignments, leases or other dispositions in the ordinary course of business or (b) sales, assignments, leases or other dispositions to wholly owned subsidiaries of the Corporation or one of such subsidiaries;

(xi) enter into any agreement, commitment or plan regarding a Liquidation or Sale or Merger;

(xii) acquire, or enter into an agreement to acquire, any capital stock, assets, business, or material product, technology, or know-how of any other entity, in any form of transaction including merger, purchase of assets or stock purchase, or, own, or permit any subsidiary of the Corporation to own, any stock or other securities of any company, partnership, association or other form of business entity except the securities of wholly owned subsidiaries of the Corporation or one of such subsidiaries;

(xiii) enter into, or agree or otherwise commit to enter into, any joint venture, strategic alliance, exclusive license agreement, exclusive marketing, distribution agreement or any similar agreement with respect to the Corporation's products, other than in the ordinary course of business;

(xiv) alter or change the rights, preferences, or privileges of the Series A Preferred or Series B Preferred;

(xv) increase or decrease the number of members of the Board of Directors from seven (7) members;

(xvi) make any loan or advance to any employee of the Corporation or any subsidiary thereof except (a) advances for reasonable travel and other normal business expenses in connection with the business, or (b) the acceptance of promissory notes approved in advance by a majority of the Board of Directors, including the directors designated by the Series A Preferred and Series B Preferred as set forth in Section 1.1(b) and (c) of the Voting Agreement;

(xvii) engage, retain or hire any senior management, attorneys, accountants, investment bankers or other professionals without giving prior notice to the directors designated by the holders of Series A Preferred and Series B Preferred as set forth in Section 1.1(b) and (c) of the Voting Agreement;

(xviii) commence or settle any material litigation involving the Corporation;

(xix) approve a capital or operating expenditure of the Corporation in excess of those expenditures budgeted within the annual operating budget of the Corporation; or

(xx) make any material changes to the benefit plans of the Corporation; or

(xxi) make any material change to accounting practices of the Corporation;

(xxii) repay any shareholder affiliated or related party loans or enter into any related party or affiliate transaction;

(xxiii) allow subsidiary or affiliate of the Corporation to engage in transactions that materially affect the Corporation's position as regards any of the foregoing list of proscribed actions;

(xxiv) amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation, including, without limitation, the provisions of this Subsection 6, or Bylaws including the filing of any certificate or designations, preferences, limitations and relative rights of any series of preferred stock or otherwise amend the Corporation's Articles of Incorporation or Bylaws and shall also require the majority approval of the Corporation's Board of Directors (including the directors designated by the holders of the shares of Series A Preferred and Series B Preferred as set forth in Section 1.1(b) and (c) of the Voting Agreement) for the Corporation to designate a new series of Preferred Stock; provided, however, that the affirmative vote or written consent of the holders of seventy-five percent (75%) of the total number of shares of Series A Preferred and Series B Preferred (voting together as a single class on an as-converted basis) shall be required to amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation; or

(xxv) voluntarily or involuntarily liquidate, dissolve or wind-up the Corporation or its business.

7. Limitations on Reissuance. No share or shares of Series A Preferred or Series B Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

8. Right Of First Offer

(a) General. Subject to the terms and conditions specified in this Subsection 8, the Corporation hereby grants to each holder of Series A Preferred and Series B Preferred (each an "Eligible Investor") a right of first offer with respect to future sales by the Corporation of its "New Securities" (as hereinafter defined). For purposes of this Subsection 8, an Eligible Investor includes any of its general or limited partners, members and affiliates. An Eligible Investor who chooses to exercise the right of first offer may designate as purchasers under such right itself or its partners, members or affiliates in such proportions as it deems appropriate.

(b) Mechanics. Each time the Corporation proposes to offer any shares of, or securities convertible into or exercisable for any shares of, any class of its capital stock ("New Securities"), the Corporation shall first make an offering of such New Securities to each Eligible Investor in accordance with the following provisions:

(i) The Corporation shall deliver a notice by certified mail ("Notice") to each Eligible Investor stating (x) its bona fide intention to offer such New Securities, (y) the number of such New Securities to be offered, and (z) the price and terms, if any, upon which it proposes to offer such New Securities.

(ii) Within twenty (20) calendar days after delivery of the Notice, each Eligible Investor may elect by sending a notice (an "Election Notice") to the Corporation to purchase or obtain, at the price and on the terms specified in the Notice, up to that portion of such investors ("Pro Rata Share") of such New Securities determined by multiplying the total number of New Securities offered by the Corporation by a fraction, the numerator of which shall be the number of shares of Common Stock then held by the Eligible Investor (assuming full conversion and exercise of all securities then convertible or exercisable), and the denominator of which shall be the total number of shares of Common Stock of the Corporation then outstanding (assuming full conversion and exercise of all securities then outstanding and convertible into or for Common Stock, but excluding stock options).

(iii) Within five (5) days after receiving the Election Notices, the Corporation shall give to each Eligible Investor who has elected to purchase his or its Pro Rata Share (a "Fully Participating Holder") written notice indicating the number of remaining New Securities not elected for purchase by the other Eligible Investors (the "Second Notice"). Each Fully Participating Holder shall have the option, exercisable by so specifying in a subsequent written notice to the Corporation (the "Second Election Notice"), given to the Corporation within five (5) days after receiving the Second Notice, to purchase such Fully Participating Holder's Pro Rata Share of any remaining New Securities not purchased by other Eligible Investors pursuant to this Subsection 8(b)(iii); provided that with respect to the Second Election Note, each such Fully Participating Holder's Pro Rata Share shall be a fraction, the numerator of which shall be the number of shares of Common Stock then held by such Fully-Participating Holder (assuming full conversion and exercise of all securities then outstanding and convertible or exercisable), and the denominator of which shall be the total number of shares of Common Stock of the Corporation then held by all Fully Participating Holders who elect to purchase New Securities pursuant to the Second Election Notice (assuming full conversion and exercise of all securities then outstanding and convertible into or for Common Stock, but excluding stock options). The process under this Section 8(b)(iii) shall continue until one Fully Participating Holder elects to purchase such remaining shares or the Fully Participating Holders decline to purchase all of the remaining shares.

(iv) The Corporation may, during the ninety (90) day period following the expiration of the period provided in subsection 8(b)(iii) hereof, offer

the remaining unsubscribed portion of the New Securities to any person or persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Notice. If the Corporation does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within ninety (90) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Investors in accordance herewith.

(c) Inapplicable Issuance of Securities. The right of first offer in this Subsection 8 shall not apply (i) to the issuance or sale of up to 6,901,501 shares of Common Stock to employees, directors and officers pursuant to plans or agreements approved by the Board of Directors for the primary purpose of soliciting or retaining their services, (ii) to or after the consummation of a Qualified Public Offering, (iii) to the issuance of securities pursuant to the conversion or exercise of convertible or exercisable securities issued on or prior to the date hereof or including the exercise of employee options and the conversion of shares of Series A Preferred or Series B Preferred, (iv) to the issuance of securities in connection with a *bona fide* business acquisition by the Corporation of another business entity, products or technologies or pursuant to a strategic alliance, but only if such acquisition or other transaction has been approved by the holders of a majority of the shares of Series A Preferred and Series B Preferred (voting together as a single class), (v) to the issuance of securities to customers, business partners, financial institutions or lessors in connection with *bona fide* commercial credit arrangements, equipment financings, or similar transactions for primarily other than equity financing purposes, but only if such issuance has been approved by the holders of a majority of the shares of Series A Preferred and Series B Preferred (voting together as a single class) and (vi) to the issuance of securities in connection with any stock split, stock dividend or recapitalization by the Corporation.

(d) Termination of Right of First Offer. The covenants set forth in Subsection 8 shall terminate as to each Eligible Investor and be of no further force or effect immediately prior to the consummation of a Qualified Public Offering.

9. Events of Noncompliance.

(a) Definition. An Event of Noncompliance shall have occurred if:

(i) the Corporation breaches or is deemed to have breached in any material respect or otherwise fails to perform or observe any material obligation, covenant or agreement set forth herein or in the Series A Stock Purchase Agreement dated as of January 15, 2002, by and among the Corporation and the holders of the Series A Preferred ("Series A Purchase Agreement") or the "Related Agreements" as defined in the Series A Purchase Agreement;

(ii) the Corporation breaches or is deemed to have breached in any material respect or otherwise fails to perform or observe any material

obligation, covenant or agreement set forth in the Series B Stock Purchase Agreement dated as of April 30, 2002, by and among the Corporation and the holders of the Series B Preferred ("Series B Purchase Agreement") or the "Related Agreements" as defined in the Series B Purchase Agreement;

(iii) the Corporation or any Subsidiary makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the Corporation or any Subsidiary bankrupt or insolvent; or any order for relief with respect to the Corporation or any Subsidiary is entered under the Federal Bankruptcy Code; or the Corporation or any Subsidiary petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any Subsidiary or of any substantial part of the assets of the Corporation or any Subsidiary, or commences any proceeding (other than a proceeding for the voluntary liquidation and dissolution of a Subsidiary) relating to the Corporation or any Subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or any such petition or application is filed, or any such proceeding is commenced, against the Corporation or any Subsidiary and either (a) the Corporation or any such Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein or (b) such petition, application or proceeding is not dismissed within 60 days;

(iv) a judgment in excess of \$500,000 is rendered against the Corporation or any Subsidiary and, within 60 days after entry thereof, such judgment is not discharged or execution thereof stayed pending appeal, or within 60 days after the expiration of any such stay, such judgment is not discharged; or

(v) the Corporation or any Subsidiary defaults in the performance of any obligation or agreement if the effect of such default is to cause an amount exceeding \$500,000 to become due prior to its stated maturity or to permit the holder or holders of any obligation to cause an amount exceeding \$500,000 to become due prior to its stated maturity.

(b) Consequences of Events of Noncompliance.

(i) If any Event of Noncompliance has occurred and continues uncured for 90 days after written notice to the Board, the number of directors constituting the Corporation's Board shall, at the request of the holders of a majority of the Series A Preferred and Series B Preferred then outstanding (voting together as a single class), be increased by one (or such other amount required to give the holders of the Series A Preferred and Series B Preferred a minimum majority of the Board), and the holders of Series A Preferred and Series B Preferred shall have the special right, voting separately as a single class (with each share of Series A Preferred and Series B Preferred being entitled to one vote) and to the exclusion of all other classes of the Corporation's stock, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships.

The special right of the holders of Series A Preferred and Series B Preferred to elect additional members of the Board may be exercised at the special meeting called pursuant to this subparagraph (ii), at any annual or other special meeting of shareholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a shareholders meeting. Such special right shall continue until such time as there is no longer any Event of Noncompliance in existence, at which time such special right shall terminate subject to revesting upon the occurrence and continuation of any Event of Noncompliance which gives rise to such special right hereunder.

At any time when such special right has vested in the holders of Series A Preferred and Series B Preferred, a proper officer of the Corporation shall, upon the written request of the holder of at least a majority of the Series A Preferred and Series B Preferred then outstanding (voting together as a single class), addressed to the secretary of the Corporation, call a special meeting of the holders of Series A Preferred and Series B Preferred for the purpose of electing directors pursuant to this subparagraph. Such meeting shall be held at the earliest legally permissible date at the principal office of the Corporation, or at such other place designated by the holders of at least 20% of the Series A Preferred and Series B Preferred then outstanding (voting together as a single class). If such meeting has not been called by a proper officer of the Corporation within 10 days after personal service of such written request upon the secretary of the Corporation or within 20 days after mailing the same to the secretary of the Corporation at its principal office, then the holders of a majority of the Series A Preferred and Series B Preferred then outstanding (voting together as a single class) may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such Person so designated upon the notice required for annual meetings of shareholders and shall be held at the Corporation's principal office, or at such other place designated by the holders of a majority of the Series A Preferred and Series B Preferred then outstanding (voting together as a single class). Any holder of Series A Preferred or Series B Preferred so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of shareholders to be called pursuant to this subparagraph.

At any meeting or at any adjournment thereof at which the holders of Series A Preferred have the special right to elect directors, the presence, in person or by proxy, of the holders of a majority of the Series A Preferred and Series B Preferred then outstanding (voting together as a single class) shall be required to constitute a quorum for the election or removal of any director by the holders of the Series A Preferred and Series B Preferred exercising such special right. The vote of a majority of such quorum shall be required to elect or remove any such director.

Any director so elected by the holders of Series A Preferred and Series B Preferred shall continue to serve as a director until the earlier to occur of (a) the date that is two (2) business days after the date on which there is no longer any Event of Noncompliance in existence or (b) the expiration of the remaining period of the full term for which such director had been elected. After there is no longer an Event of Noncompliance in existence or the expiration of the full term for which such director has

been elected ceases (provided that the special right to elect directors has terminated), as the case may be, the number of directors constituting the Board of the Corporation shall decrease to such number as constituted the whole Board of the Corporation immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to the special right to elect directors.

(ii) If any Event of Noncompliance exists, each holder of Series A Preferred and Series B Preferred shall also have any other rights and remedies which such holder is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

D. Common Stock.

1. Dividend Rights. Subject to the provisions of Article III.C.1 above, the holders of the Common Stock shall be entitled to receive, out of any funds of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon a Liquidation Event of the Corporation, the assets of the Corporation shall be distributed as provided in Subsection 2 of Article III.C. above.

3. Redemption. The holders of Common Stock do not have any redemption rights.

4. Voting Rights. The holders of Common Stock shall have the right to one (1) vote per share of Common Stock held, and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE IV

No director of the Corporation shall be personally liable for monetary damages to the Corporation or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director, unless, according to the Code: (a) the director breached or failed to perform his or her duties as a director; and (b) the director's breach of, or failure to perform those duties constitutes: (i) a violation of the criminal law, unless the director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful, as further defined under Section 607.0831 of the Code; (ii) a transaction from which the director derived an improper personal benefit, either indirectly or directly; (iii) a circumstance under which the liability provisions of Section 607.0834 of the Code would be applicable; (iv) in a proceeding by or in the right of the Corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of the Corporation, or willful misconduct; or (v) in a proceeding by or in the right of someone other than the Corporation or a shareholder, recklessness, as defined

H02000123198 2

under Section 607.0834 of the Code, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The Corporation shall indemnify any director or officer of the Corporation who was or is party to any proceeding (other than an action, by or in the right of, the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, to the fullest extent permitted by the Code as now in effect and as hereafter amended. The indemnification provided herein shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such person.

Any indemnification permitted under the laws of the State of Florida shall be made by the Corporation only as authorized in the specific case upon a determination that the indemnification of the officer or director, employee or agent has met certain specified standards of conduct. Upon application for indemnification by any such person, the Corporation shall promptly cause such determination to be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; (ii) if a quorum cannot be obtained by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding; (iii) by independent legal counsel selected by the Board of Directors prescribed in (i) or its committee in the manner prescribed in (ii), or if a quorum of the Board of Directors cannot be obtained under (i) and a committee cannot be designated under (ii), selected by majority vote of the full Board of Directors (in which selection directors who are parties may participate); or (iv) by the shareholders by a majority vote of a quorum consisting of shareholders who are not parties or, if no such quorum is obtainable, by a majority vote of shareholders who are not parties to such proceeding.

The Corporation may purchase and maintain insurance on behalf of any such persons whether or not the Corporation would have the power to indemnify such officers and directors against any liability under the laws of the State of Florida. If any expenses or other amounts are paid by way of indemnification, other than by court order, action by shareholders or by an insurance carrier, the Corporation shall provide notice of such payment to the shareholders in accordance with the provisions of the laws of the State of Florida.

ARTICLE V

Any action required or permitted to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all of the shareholders entitled to vote on the action, or by persons who would be entitled to vote at a meeting those shares having voting power to cast not less than the minimum number (or numbers, in the case of

voting by groups) of votes that would be necessary to authorize or take such actions at a meeting at which all shares entitled to vote were present and voted. The action must be evidenced by one or more written consents describing the action taken, signed by shareholders entitled to take action without a meeting and delivered to the Corporation for inclusion in the minutes or filing with the corporate records.

ARTICLE VI

The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors, except for certain protective rights of the shareholders as described herein.

ARTICLE VII

Meetings of shareholders may be held within or without the State of Florida as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Florida at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE VIII

Election of directors at an annual or special meeting of shareholders need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE IX

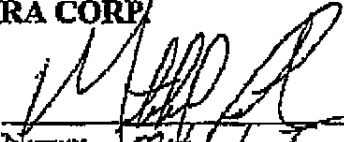
The nature of the business to be conducted or promoted and the purposes of the Corporation are to engage any lawful act or activity for which corporations may be organized under the Code. In furtherance of its corporate purposes, the Corporation shall have all of the general and specific powers and rights granted to and conferred on a corporation by the Code.

IN WITNESS WHEREOF, the undersigned has executed these Second Amended and Restated Articles of Incorporation on April 30, 2002.

CYTURA CORP/

By:

Name:
Title:


Mitchell J. Darkey
CEO