

P99000043003

RECEIVED
02 AUG 13 AM 10:07
DIVISION OF CORPORATIONS

Florida Department of State
Division of Corporations
Public Access System

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.

((H02000180136 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 : AUTONATION
Account Number : I20000000096
Phone : (954)769-7285
Fax Number : (954)769-6311

02 AUG 13 PM 12:10
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

BASIC AMENDMENT

AUTONATION BENEFITS COMPANY, INC.

Certificate of Status	0
Certified Copy	1
Page Count	15
Estimated Charge	\$43.75

AM Post
RC
8/13

Electronic Filing Menu

Corporate Filing

Public Access Help

16

(H020001801362)

ARTICLES OF AMENDMENT AND RESTATEMENT
OF
AUTONATION BENEFITS COMPANY, INC.

FILED
02 AUG 13 PM 12:10
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

To the Department of State
State of Florida

Pursuant to the provisions of the Florida Business Corporation Act, the corporation hereinafter named does hereby amend and restate its Articles of Incorporation.

1. The name of the corporation is AutoNation Benefits Company, Inc. (hereinafter, the "Corporation").
2. The text of the Restated Articles of Incorporation of the Corporation, as amended hereby, is attached hereto as Exhibit A and made a part hereof.

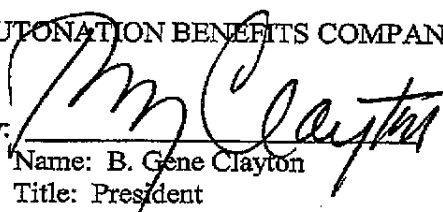
CERTIFICATE

It is hereby certified that:

1. The attached Restated Articles of Incorporation contains amendments to the Articles of Incorporation of the Corporation requiring shareholder approval.
2. The Articles of Incorporation of the Corporation are hereby amended in their entirety so as henceforth to read as set forth in the Restated Articles of Incorporation attached hereto as Exhibit A and made a part hereof.
3. The date of adoption of the aforesaid amendments was August 9, 2002.
4. The designation of each voting group of shareholders entitled to vote separately on the amendment and restatement is hereby stated as follows: Class A Common, Class B Common and Preferred Stock.
5. The number of votes cast for the said amendments and restatement by each said voting group of shareholders was sufficient for the approval thereof.

Executed on August 12, 2002.

AUTONATION BENEFITS COMPANY, INC.

By: 
Name: B. Gene Clayton
Title: President

(H020001801362)

(H020001801362)

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
AUTONATION BENEFITS COMPANY, INC.**

The Articles of Incorporation of AutoNation Benefits Company, Inc., (the "Corporation"), are hereby amended and restated in their entirety as follows:

FIRST

NAME

The name of the Corporation shall be: AUTONATION BENEFITS COMPANY, INC.

SECOND

ADDRESS

The principal place of business of the Corporation is 110 S.E. 6th Street, 20th Floor, Ft. Lauderdale, FL 33301.

THIRD

PURPOSE

The purpose of this Corporation and the objects of business to be carried on by it are limited to the administration, management, and settlement of liabilities and claims assumed by the Corporation with respect to the Health Plans. The Corporation shall not engage in activities that do not relate to the foregoing purpose.

FOURTH

CAPITAL STOCK

A. General Provisions

1. **Authorized Shares and Class Designations.** The aggregate number of shares of all classes of capital stock that this Corporation shall have authority to issue is one hundred thirty thousand three hundred (130,300), consisting of (i) one hundred thirty thousand (130,000) shares of Class A common stock, par value \$0.001 per share (the "Class A Common Stock"), (ii) one hundred (100) shares of Class B Common Stock, par value \$0.001 per share (the "Class B Common Stock"; the Class A Common Stock and the Class B Common Stock are collectively referred to as the "Common Stock"), and

(H020001801362)

(H020001801362)

(iii) two hundred (200) shares of Preferred Stock, par value \$0.001 per share (the "*Preferred Stock*").

2. Voting and Board Representation.

(a) General Voting Rights. Subject to paragraph 3 below, each share of Class A Common Stock and Preferred Stock shall be entitled to one vote with respect to all matters, and shall vote as a single class of capital stock. Except as otherwise provided by law, the holders of Class B Common Stock shall have no voting rights.

(b) Board of Directors. The Board of Directors of the Corporation shall consist of six directors. The holders of the Class A Common Stock shall, as a class, elect five directors and the holders of the Preferred Stock shall, as a class, elect one director. Any vacancy on the Board of Directors shall be filled in accordance with the affirmative vote of holders of a majority of the outstanding shares of the class of capital stock which elected the director whose position is vacant.

3. Amendment of Articles of Incorporation or Bylaws. Except as otherwise provided by law, any amendment of these Articles of Incorporation or the Bylaws of the Corporation shall require the affirmative vote of shareholders holding a majority of the issued and outstanding shares of each class of voting capital stock of the Corporation; provided, however, that any amendment of Sections A.3, A.4, A.5, B, C or D of the Fourth Article of these Articles of Incorporation shall require the affirmative vote of shareholders holding a majority of the issued and outstanding shares of Class B Common Stock.

4. Distributions. All distributions made with respect to a class of capital stock hereunder shall be apportioned among the holders of shares of such class on a pro rata basis in accordance with the number of shares of such class so held. The relative rights and preferences of the classes of capital stock of the Corporation with respect to distributions are as follows:

(a) Dividends. Subject to the provisions of applicable law, dividends may be paid by the Corporation at such times and in such amounts as the Board of Directors of the Corporation shall determine. Any reference to a "dividend" contained in this Section shall not be deemed to include any stock dividend or cash or property distributions made in connection with any redemption or any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

(1) Common Stock. Notwithstanding the number of shares of Common Stock outstanding, ninety-eight percent (98%) of all dividends paid by the Corporation with respect to its Common Stock shall be paid to the holders of the Class A Common Stock, and two percent (2%) of such dividends shall be paid to the holders of the Class B Common Stock. No dividends shall be paid with respect to the Common

(H020001801362)

(H020001801362) 005

Stock if any dividends due to the holders of the Preferred Stock are in arrears or if any interest on dividends in arrears remains unpaid at such time.

(2) Preferred Stock. The holders of the Preferred Stock shall be entitled to receive as a class, when and as declared by the Board of Directors of the Corporation from the surplus or net earnings of the Corporation, annual dividends in the amount of two hundred twenty-five thousand dollars (\$225,000), and no more, subject to increase in the amount of such dividends to the extent that they are not paid on a timely basis, as provided below. Said dividends shall accrue on, and be paid no later than, each anniversary of the date on which shares of the Preferred Stock were first issued by the Corporation. The dividends on the Preferred Stock shall be cumulative, and shall be paid before any dividends on the Common Stock are paid. If the annual dividends on Preferred Stock with respect to any year are not paid by the due date set forth above, the amount of such unpaid dividend shall be deemed to be in arrears and increase at the rate of seven and one-half percent (7.5%) per annum, compounded annually, until the amount of each dividend, including the increase thereon, is fully paid. Distributions made to holders of Preferred Stock shall be applied first to reduce the amount of accrued and unpaid increases on dividends in arrears provided for in the preceding sentence, until such amount is fully paid, and then against the remaining amount of accrued and unpaid dividends.

(b) Liquidating Distributions. In the event of a liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, cash or property available for distribution to the shareholders shall be distributed to the shareholders in the amounts, orders and priorities set forth in paragraphs (1) through (4) below. Cash or property shall be distributed to the shareholders only after satisfaction of or making due provisions for payment of liabilities and obligations of the Corporation, whether fixed or contingent, mature or executory, and, with respect to obligations relating to the Health Plans, such provisions shall include, at a minimum, setting apart or designation of assets in an amount equal to the Benefit Obligation Value. The priorities of liquidating distributions to the shareholders shall be as follows:

(1) First: To the holders of Preferred Stock in an amount equal to the total dividends accrued and unpaid with respect to the Preferred Stock, including the unpaid amount of additional dividends which have accrued on dividends in arrears.

(2) Second: To the holders of the Preferred Stock in an amount equal to the Preferred Stock Liquidation Preference.

(3) Third: To the holders of the Class B Common Stock, in an amount equal to the Class B Liquidation Value.

(4) Fourth: All amounts remaining after the distributions described in the foregoing paragraphs (1) through (3) shall be distributed to the holders of the Class A Common Stock

(H020001801362)

(H02 0001801362)

☐ ODB

5. Procedure for Liquidating Class B Common Stock. Prior to the payment of liquidating distributions by the Corporation to the holders of Common Stock, the Corporation shall be required to issue a Liquidation Notice to the holders of Class B Common Stock advising them of the liquidation of the Corporation. Said Liquidation Notice shall be treated as the delivery of a Redemption Notice by the Corporation during the Redemption Period for all purposes. The payment of liquidating distributions with respect to the Class B Common Stock shall be governed by Section B.4 of this FOURTH Article, and the Class B Common Stock shall be canceled on the Closing Date as provided for in said Section in the same manner as a redemption of the Class B Common Stock. All rights and obligations arising as a result of delivery of a Redemption Notice under section B.4 of this FOURTH Article shall be applicable to a liquidation, dissolution or winding up under this section A, and shall come into effect upon issuance of a Liquidation Notice.

B. Redemption of Class B Common Stock.

1. Corporation Option. The Corporation shall have the option to redeem all, and not less than all, of the outstanding shares of Class B Common Stock, for an aggregate cash price equal to the Class B Liquidation Value determined as of the Valuation Date. This option is referred to herein as the Corporation Option. Said Corporation Option can be exercised by the Corporation only by delivery of a Redemption Notice to all of the holders of Class B Common Stock during the Redemption Period. The redemption of Class B Common Stock pursuant to the exercise of the Corporation Option shall be consummated on the Closing Date. The decision to exercise the Corporation Option shall be made by the Corporation's Board of Directors.

2. Shareholder Option. Each holder of Class B Common Stock shall have the option to require the Corporation to redeem all, and not less than all, of the outstanding shares of Class B Common Stock for an aggregate cash price equal to the Class B Liquidation Value determined as of the Valuation Date. This option is referred to herein as the Shareholder Option. Said Shareholder Option can be exercised by any holder of Class B Common Stock only by delivery of a Redemption Notice to the Corporation during the Redemption Period. The redemption of Class B Common Stock pursuant to the exercise of a Shareholder Option shall be consummated on the Closing Date. The exercise of a Shareholder Option by any holder of Class B Common Stock shall be binding on all holders of Class B Common Stock, and the Corporation shall redeem all shares of Class B Common Stock pursuant to the proper exercise of a Shareholder Option by any shareholder in accordance with the provisions of these Articles of Incorporation.

3. Notices by the Corporation Following Redemption Notice Issued by a Shareholder. If there is more than one holder of Class B Common Stock, then within two business days of receipt of a Redemption Notice from a shareholder, the Corporation shall issue a written notice to all of the other holders of Class B Common Stock advising

(H020001801362)

(H020001801362)

2007

them of the exercise of a Shareholder Option, and that all shares of Class B Common Stock shall be redeemed.

4. Closing Procedures.

(a) On the Closing Date, the Corporation shall issue to the holders of the Class B Common Stock a written notice setting forth a good-faith estimate of the Class B Liquidation Value and of all amounts defined in Section D. of this FOURTH Article, including supporting calculations (a "*Preliminary Value Report*"), and the redemption of the Class B Common Stock shall be consummated, with the Corporation paying to the holders of the Class B Common Stock on such date an aggregate amount equal to the estimated Class B Liquidation Value set forth on the Preliminary Value Report, together with interest on such Class B Liquidation Value accruing during the period commencing on the Valuation Date and ending on the Closing Date, at a rate equal to the prime rate published in the *Wall Street Journal* on the first business day following the Valuation Date. All payments required pursuant to this paragraph shall be made in immediately available funds. The holders of the Class B Common Stock shall transfer their shares of Class B Common Stock to the Corporation on the Closing Date against payment of the foregoing amounts. The holders of the Class B Common Stock shall be required, as a precondition to receipt of payment of the amounts referred to in this paragraph, to execute an instrument confirming that they will pay to the Corporation the amounts, if any, that they are required to pay to the Corporation pursuant to paragraph (e) below, within the time periods specified in said paragraph (e).

(b) No later than the first day of the seventh calendar month immediately following the Closing Date, the Corporation shall provide the holders of the Class B Common Stock which was redeemed pursuant to paragraph (a) above with a written notice setting forth the Class B Liquidation Value and all amounts defined in Section D. of this FOURTH Article, including supporting calculations (a "*Final Value Report*"). If there is a dispute as to the calculation of such amounts, the holders of the Class B Common Stock disputing the amounts shall issue a written notice to the Corporation (a "*Value Dispute Notice*") no later than 30 days after date of issuance of the Final Value Report advising the Corporation of a disagreement, and either (i) proposing a revised amount of the Class B Liquidation Value, with supporting calculations, or (ii) requesting a recalculation of said amounts by the Corporation, and the reasons for such request. If a Value Dispute Notice is not issued to the Corporation within 30 days after the date of issuance of the Final Value Report by the Corporation, the amounts set forth on the Value Report shall be deemed to have been agreed to by all holders of the Class B Common Stock, and the Class B Liquidation Value set forth in the Final Value Report shall be binding upon all of the parties.

(c) If the Corporation and the issuer of the Value Dispute Notice cannot reach an agreement as to the amounts of the Class B Liquidation Value within 10 days after the date of the Corporation's receipt of the Value Dispute Notice, then such

(H020001801362)

H020001801362 008

amounts shall be determined by an arbitrator which will either be agreed to in writing by the holders of Class B Common Stock and by the Corporation within 15 days after the date of the Corporation's receipt of the Value Dispute Notice, or which will be an independent accounting firm selected by lot within 15 days after the date of the Corporation's receipt of the Value Dispute Notice from among two of the ten largest accounting firms in the United States of America at that time (excluding, however, any firm which is then the regular outside accounting firm of the Corporation, any holder of the Class B Common Stock, or any person or entity in control of any of the foregoing). The arbitrator shall submit its decision in writing, together with supporting information and calculations, to the parties no later than 20 days after the date of selection of the arbitrator. The determination of the arbitrator shall be binding on the Corporation and all of the holders of the Class B Common Stock. The fees of the arbitrator shall be borne one-half by the Corporation and one-half by the holders of the Class B Common Stock. With the exception of the arbitrator's fees, each party shall pay for its own expenses with respect to said arbitration.

(d) The decisions of shareholders holding a majority of the outstanding shares of Class B Common Stock shall be binding on all of the holders thereof, and the decisions of the Corporation with respect to any of the foregoing matters shall be made by its Board of Directors.

(e) No later than the last day of the ninth month immediately following the Closing Date (the "*Final Settlement Date*"), the Corporation and the holders of the Class B Common Stock shall settle accounts. If the Class B Liquidation Value determined in accordance with paragraphs (b) and (c) above exceeds the estimated Class B Liquidation Value paid to the holders of Class B Common Stock on the Closing Date pursuant to paragraph (a) above, then the Corporation shall pay such excess to the holders of the Class B Common Stock no later than the Final Settlement Date, together with interest on such excess accruing during the period commencing on the Valuation Date and ending on the date of payment of such excess, at a rate equal to the prime rate published in the *Wall Street Journal* on the first business day following the Valuation Date. If the estimated Class B Liquidation Value paid to the holders of Class B Common Stock on the Closing Date pursuant to paragraph (a) above is greater than the Class B Liquidation Value determined in accordance with paragraphs (b) and (c) above, then the holders of the Class B Common Stock shall pay such excess to the Corporation no later than said Final settlement Date, together with interest on such excess accruing during the period commencing on the Closing Date and ending on the date of payment of such excess, at a rate equal to the prime rate published in the *Wall Street Journal* on the first business day following the Closing Date. All payments required pursuant to this paragraph shall be made in immediately available funds.

(f) All payments made by the Corporation in connection with a redemption of, or as a liquidating distribution with respect to, the Class B Common Stock shall be apportioned in equal parts among each share of outstanding Class B Common

(H020001801362)

(H020001801362)⁰⁰⁹

Stock, and paid to the holders thereof on a pro rata basis in accordance with the number of shares of Class B Common Stock held.

5. Execution of Documents. In connection with the consummation of Redemption of Class B Common Stock pursuant to the exercise of a Corporation Option or Shareholder Option, the shareholders and the Corporation shall execute such documents as may be reasonably necessary to consummate the redemption.

C. Notices.

All notices under these Articles of Incorporation shall be sent by (i) U.S. certified mail, return-receipt requested, (ii) nationally recognized overnight courier service (such as Federal Express), or (iii) hand delivery, in the case of any shareholder, to the address appearing on the books of the Corporation, or, in the case of the Corporation, to the Corporation's principal office. A signed receipt of delivery shall be conclusive evidence, but not the only evidence, of delivery. A refusal of acceptance of delivery of any communication shall be deemed to have been received by the intended recipient.

D. Definitions and Related Agreements and Rules.

The following definitions, agreements and rules shall apply for all purposes relating to these Articles of Incorporation.

"Adjusted Net Equity" shall mean a sum equal (i) the amount of the total assets of the Corporation minus the amount of the total liabilities of the Corporation, in such amounts as are reported on the balance sheet of the Corporation in accordance with generally accepted accounting principles, minus (ii) the Benefit Obligation Value, minus (iii) the Design Change Future Cost Decrease Adjustment, minus (iv) the Design Change Historic Cost Decrease Adjustment, minus (v) the Size Variance Historic Cost Decrease Adjustment, minus (vi) the Size Variance Future Cost Decrease Adjustment, minus (vii) the Preferred Stock Liquidation Preference, minus (viii) the accrued and unpaid dividends on Preferred Stock. For purposes of calculating the Adjusted Net Equity, an amount equal to any deferred tax asset or liability of the Corporation existing as of the date of original issuance of the Class B Common Stock shall be excluded, any promissory note or other debt instrument held by the Corporation, the obligor of which is an entity which is or was a direct or indirect subsidiary of AutoNation, Inc., a Delaware corporation ("AutoNation"), shall be valued at an amount equal to its outstanding principal amount, plus accrued and unpaid interest thereon, and the amount of the Benefit Obligation Value in clause (ii) above shall be reduced by the amount, if any, of the Benefit Obligation Value that is reported as a liability on the balance sheet of the Corporation in accordance with generally accepted accounting principles pursuant to clause (i) above.

"Applicable Rate" means the interest rate in effect from time to time pursuant to the Revolving Credit Agreement between the Issuer and Florida Auto Corp., a Delaware corporation, entered into on the same date as the Subscription Agreement.

(H020001801362)

(H020001801362) 010

"Assumed Obligations" means the obligations assumed by the Corporation in connection with the issuance of its Class B Common Stock, pursuant to the Subscription Agreement.

"Benefit Obligation Value" means, with respect to any Measurement Date, the sum of Unpaid Historic Claims plus Future Claims.

A **"Change in Control"** shall be deemed to have occurred at such time as (i) any person (as the term "person" is used in Section 13(d)(3) or Section (14)(d)(2) of the Securities Exchange Act of 1934 (the "Exchange Act") files a Schedule 13D or Schedule 14D-1 under the Exchange Act (or any successor schedule, form or report) disclosing that such person has become the beneficial owner of 50% or more of the total voting power in the aggregate of all classes of stock of capital stock of AutoNation then normally entitled to vote in elections of directors, or (ii) there shall be consummated any consolidation or merger of AutoNation pursuant to which the common stock of AutoNation would be converted into cash, securities or other property, in each case other than a consolidation or merger of AutoNation in which the holders of common stock immediately prior to the consolidation or merger have, directly or indirectly, at least a majority of the total voting power in the aggregate of all classes of capital stock of the continuing or surviving corporation immediately after the consolidation or merger.

"Class B Liquidation Value" means an amount determined as of the Valuation Date as follows:

(1) If the Adjusted Net Equity as of such Valuation Date is greater than or equal to the Initial Adjusted Net Equity, then the Class B Liquidation Value shall be equal to the sum of (i) \$1,500,000 plus (ii) the product of one percent (1%), multiplied by the Increase in Adjusted Net Equity, but only to the extent that the Increase in Adjusted Net Equity does not exceed two hundred million dollars; plus (iii) if the Increase in Adjusted Net Equity equals or exceeds two hundred million dollars, the product of three percent (3%), multiplied by the amount by which the Increase in Adjusted Net Equity exceeds two hundred million dollars, but only to the extent that such excess does not exceed one hundred million dollars; plus (iv) if the Increase in Adjusted Net Equity equals or exceeds three hundred million dollars, the product of two percent (2%), multiplied by the amount by which the Increase in Adjusted Net Equity exceeds three hundred million dollars. Notwithstanding the foregoing, in no event shall the Class B Liquidation Value determined in accordance with this paragraph (1) exceed the sum of seven million five hundred thousand dollars. For example, if the Increase in Adjusted Net Equity is equal to \$280,000,000, the Class B Liquidation Value shall be equal to \$5,900,000, which represents the sum of (i) \$1,500,000 plus (ii) the first \$200,000,000 of Increase in Adjusted Net Equity multiplied by 1%, plus (iii) the next \$80,000,000 of Increase in Shareholders' Equity multiplied by 3%.

(2) If the Adjusted Net Equity as of such Valuation Date is less than the Initial Adjusted Net Equity, the Class B Liquidation Value shall be equal to the

(H020001801362)

(H020001801362) 011

greater of the following amounts: (i) the product of twenty percent (20%) multiplied by the Adjusted Net Equity, which product may not exceed seven hundred fifty thousand dollars; or (ii) two percent (2%) of the Adjusted Net Equity.

Notwithstanding the foregoing, in no event shall the Class B Liquidation Value exceed twenty percent (20%) of the total fair market value of all outstanding shares of capital stock of the Corporation.

"Closing Date" means the date on which the redemption or cancellation of the Class B Common Stock is consummated pursuant to the exercise of a Corporation Option or a Shareholder Option or the issuance of a Liquidation Notice. The Closing Date shall be on the last day of the calendar month immediately following the Valuation Date, or, if such day is not a business day, the immediately preceding business day.

"Corporation Option" means an option and right (but not the obligation) held by the Corporation to redeem all and not less than all of the outstanding shares of the Class B Common Stock, at a price per share equal to the Redemption Price.

"Design Change" means a change to a Health plan instituted during any given calendar year that has been approved in accordance with the amendment provisions for the applicable Health Plan or which is otherwise required by law, and that results in change to the type or level of services covered, or the level of reimbursement to Health Plan participants, or contribution levels by participants. Changes in level of reimbursement include, but are not limited to, changes in deductibles, co-insurance amounts, co-payments, benefit maximums and out-of-pocket limits. All Design Changes taking effect on the same date shall be considered to be a single Design Change.

"Design Change Future Cost Decrease Adjustment" means the amount by which the value of Future Claims is decreased which is attributable to Design Changes, but such amount shall only include amounts which are attributable to (i) any change in law, (ii) a termination of any Health Plan, or (iii) initiatives that the Corporation and shareholders holding a majority of the issued and outstanding shares of Class A Common Stock and Class B Common Stock, respectively, agree in writing at their sole discretion are not intended to reduce the costs associated with the Health Plans. In no event shall the amount provided for in this paragraph be a negative amount. If the amount is negative, it shall be deemed to be zero.

"Design Change Historic Cost Decrease Adjustment" means the sum of all Design Change Cost Decreases for all calendar years or fractions thereof through the Measurement Date, plus interest charges on each such Design Change Cost Decrease accruing at the Applicable Rate from the last day of the period to which such Design Change Cost Decrease pertains, through and including the Measurement Date, but such sum shall only include amounts which are attributable to (i) any change in law, (ii) a termination of any Health Plan, or (iii) initiatives that the Corporation and shareholders holding a majority of the issued and outstanding shares of Class A Common Stock and

(H020001801362)

(H020001801362) 012

Class B Common Stock, respectively, agree in writing at their sole discretion are not intended to reduce the costs associated with the Health Plans. In no event shall the amount provided for in this paragraph be a negative amount. If the amount is negative, it shall be deemed to be zero.

"Design Change Historic Cost Decreases" means, with respect to each Health Plan for any year or other period, decreases in Historic Claims resulting from Design Changes, including decreases in Historic Claims, net of offsets for participant contributions to the Health Plans, arising from increases in contribution levels by participants in the Health Plans, plus interest charges thereon. Design Change Historic Cost Decreases shall be stated separately for every calendar year or fraction thereof through and including the Measurement Date. The Design Change Historic Cost Decrease for any year or other period is the decrease in Historic Claims arising during said period attributable to Design Changes instituted during said period and prior periods, and shall include interest charges on such amounts accruing at the Applicable Rate from the date on which such decreases are deemed to have been realized through the last day of the period in question. Such decreases in Historic Claims shall be deemed to have been realized as follows: (i) in the case of decreases in Historic Claims during a period attributable to Design Changes instituted in prior periods, an equal portion of the sum of such decreases shall be allocated to and deemed realized on each day during the period in question; and (ii) in the case of decreases in Historic Claims during a period attributable to Design Changes instituted during such period, an equal portion of the sum of such decreases shall be allocated to and deemed realized on each day during the period commencing on the date such Design Changes are instituted and ending on and including the last day of the period in question. In no event shall any Design Change Historic Cost Decrease be a negative amount. If said amount is negative, it shall be deemed to be zero.

"Future Claims" means, with respect to any Measurement Date, the actuarially determined present value of the Assumed Obligations for all periods after the Measurement Date, reduced by (i) the actuarially determined present value of contributions required to be made to the Health Plans by participants therein in accordance with their terms for all periods after the Measurement Date, until the Termination Date, and (ii) Unpaid Historic Claims. The value of Future Claims shall be determined by applying the same methods used in determining the Initial Benefit Obligation Value, except that it shall be determined by taking into account the following: (i) assumptions based on information available as of the time of such determination (including, without limitation, current information regarding per capita costs, the effect of savings initiatives or adverse cost developments and discount, interest and trend rates) and (ii) the actual number of participants in the Health plans as of the Measurement Date and assuming that said number shall increase in accordance with the growth rates in the number of participants assumed in determining the Initial Benefit Obligation Value (unless it is determined that given the facts and circumstances on the Measurement Date, such growth rate is clearly erroneous, in which case the best estimate of the growth rate at such time shall be applied).

(H020001801362)

(H020001801361) 013

"Health Plans" has the meaning given to it in the Subscription Agreement.

"Historic Claims" means, with respect to any Measurement Date, any Assumed Obligations paid on or before the Measurement Date, and the actuarially determined present value of any Assumed Obligations that have been incurred on or before the Measurement Date, but not paid by the end of the Measurement Date, net of offsets for contributions by participants in the Health Plans on or prior to the Measurement Date.

"Increase in Adjusted Net Equity" shall be the remainder of the Adjusted Net Equity as of a given Measurement Date, minus the Initial Adjusted Net Equity. If said remainder is not a positive amount, it shall be deemed to be zero.

"Initial Adjusted Net Equity" shall mean the Adjusted Net Equity immediately after giving effect to consummation of the transfer of consideration to the Corporation and the assumption of obligations by the Corporation pursuant to the Subscription Agreement. The calculation of Initial Adjusted Net Equity shall be reviewed and approved by the Corporation's Board of Directors, and reflected in resolutions of said Board of Directors, copies of which shall be inserted in the Corporation's minute book. The amount of Initial Adjusted Net Equity so approved of by the Board of Directors shall be conclusive for all purposes requiring any reference to Initial Adjusted Net Equity.

"Initial Benefit Obligation Value" means the Benefit Obligation Value as of the date on which the Class B Common Stock is first issued by the Corporation. The amount of the Initial Benefit Obligation Value and the assumptions made and methods applied in calculating it shall be set forth in a report to be prepared by outside consultants to the Corporation which shall be reviewed and acknowledged by the Board of Directors of the Corporation, and shall be kept in the official permanent records of the Corporation. The amount of the Initial Benefit Obligation shall be the same amount as specified in the Subscription Agreement.

"Liquidation Notice" means a written notice sent by the Corporation to the holders of the Class B Common Stock, advising them of the liquidation and winding up of the affairs of the Corporation and that the Class B Common Stock is to be canceled in accordance with such winding up.

"Loan Acceleration Event" means the date on which a creditor of the Corporation duly demands the acceleration of any obligation for borrowed money of the Corporation in excess of one hundred thousand dollars in connection with an event of default under such obligation and after the expiration of any applicable cure period thereunder, all in accordance with the terms of such obligation, or the tenth day after the date on which the obligor under any obligation for borrowed money held by the Corporation in excess of one hundred thousand dollars defaults with respect to the payment to the Corporation of sums due under such obligation, but only if said default is not cured on or prior to the tenth day after said default.

(H020001801362)

(17020001801362)⁰¹⁴

"Measurement Date" means every date on which an amount referred to in these Articles of Incorporation is required to be determined, including the Valuation Date.

"Preferred Stock Liquidation Preference" means the sum of the three million dollars (\$3,000,000).

"Redemption Notice" means a written notice sent by the Corporation to the holders of the Class B Common Stock, or by a holder of the Class B Common Stock to the Corporation, advising the recipient that the sender desires to exercise a Corporation Option or a Shareholder Option, as the case may be.

"Redemption Period" means, with respect to a Shareholder Option, any date which is during calendar year 2005; with respect to a Corporation Option, **"Redemption Period"** means any date which is on or after January 1, 2007. Notwithstanding the foregoing, the Redemption Period with respect to a Shareholder Option and a Corporation Option shall be accelerated and commence on the earlier of (i) the date on which all of the Corporation's liabilities are by any other person or entity, (ii) the date on which all of the Corporation's obligations relating to the Health Plans have been paid or settled in full, or (iii) the date on which a Change in Control occurs. In addition, the Redemption Period with respect only to a Shareholder Option shall be accelerated and commence on the earlier of (i) the occurrence of any events referred to in the preceding sentence, or (ii) the date on which a Loan Acceleration Event occurs. In case of such an acceleration, the Redemption Period shall not thereafter expire.

"Shareholder Option" means an option and right (but not the obligation) held by a holder of Class B Common Stock to require the Corporation to redeem all, and not less than all, of the shares of Class B Common Stock at a price per share equal to the Redemption Price.

"Size Variance Future Cost Decrease Adjustment" means the amount by which the value of Future Claims has been reduced as a result of the actual number of participants in the Health Plans as of the Measurement Date being less than the number of participants assumed for such Measurement Date for purposes of determining the Initial Benefit Obligation Value. In no event shall the amount provided for in this paragraph be a negative amount. If the amount is negative, it shall be deemed to be zero.

"Size Variance Historic Cost Decreases" means, with respect to each Health Plan for any year or other period, the sum of the "daily size variances" defined below for all days in such period, plus interest charges on such daily size variances. Size Variance Historic Cost Decreases shall be stated separately for every calendar year or fraction thereof through and including the Measurement Date. The daily size variance for a given day shall be the product of the difference, if any, between the average number of participants in the Health Plan for all days during such period assumed for purposes of determining the Initial Benefit Obligation Value, minus the actual number of participants in the Health Plan on such day, multiplied by the average daily cost per participant for

(17020001801362)

(H020001801362)⁰¹⁵

such period assumed for purposes of determining the Initial Benefit Obligation Value. If the assumed number of participants exceeds the actual number of participants for any day, the daily size variance for such day and interest charges thereon shall be expressed as a positive number, and if the assumed number of participants is less than the actual number of participants for any day, the daily size variance for such day and interest charges thereon shall be expressed as a negative number. Interest charges on daily size variances shall be accrued at the Applicable Rate during the period commencing on the date of such daily size variance and ending on the last day of the period in question. In no event shall any Size Variance Historic Cost Decrease be a negative amount. If the sum of the daily cost variances referred to herein for the period in question is negative, the Size Variance Historic Cost Decrease for such period shall be deemed to be zero.

"Size Variance Historic Cost Decrease Adjustment" means the sum of all Size Variance Historic Cost Decreases for all calendar years or fractions thereof through the Measurement Date, plus interest charges on each such Size Variance Historic Cost Decrease accruing at the Applicable Rate from the last day of the period to which it pertains, through and including the Measurement Date.

"Subscription Agreement" means the Subscription and Assumption Agreement between the Corporation and the initial holder of Class B Common Stock, which provides for the issuance of the Class B Common Stock and assumption by the Corporation of certain obligations of the initial holder of Class B Common Stock.

"Termination Date" means December 31, 2013.

"Unpaid Historic Claims" means the amount of Historic Claims which remains unpaid as of the Measurement Date.

"Valuation Date" means, in the case of a Redemption Notice sent in accordance with these Articles of Incorporation, December 31st of the calendar year during which such Redemption Notice is sent, and, in the case of issuance of a Liquidation Notice in connection with the liquidation and winding up of the Corporation, it shall mean the last day of the calendar month immediately following the calendar month during which a Liquidation Notice is issued.

FIFTH

INDEMNITY


The Corporation is authorized to indemnify its officers, directors, agents, shareholders and other parties to the fullest extent permitted by applicable law, in accordance with the provisions set forth in the bylaws of the Corporation or agreements which the Corporation enters into.

(H020001801362)

(H020001801302)⁰¹⁶

IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Incorporation on behalf of the Corporation on August 12, 2002.

AUTONATION BENEFITS COMPANY, INC.


By: _____
Name: B Gene Clayton
Title: President

(H020001801362)