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BASIC AMENDMENT  
EAPPEALSOLUTIONS, INC.

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Amendment

1/9/02

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**ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
EAPPEALSOLUTIONS, INC.**

In accordance with the Florida Business Corporation Act, eAppealSolutions, Inc. (the "Corporation") hereby adopts the following Articles of Amendment to the Corporation's Articles of Incorporation, as previously amended:

**ITEM I**

The name of this Corporation is eAppealSolutions, Inc.

**ITEM II**

"Article III - Capital Stock" of the Articles of Incorporation of the Corporation, as previously amended, is hereby deleted in its entirety, and the following language is inserted in lieu thereof:

**ARTICLE III - CAPITAL STOCK**

Section 1. Authorized Capital Stock. The aggregate number of shares of all classes of capital stock that the Corporation shall have the authority to issue is 15,000,000, of which 10,000,000 shares shall be designated Common Stock, par value \$.001 per share (the "Common Stock"), and 5,000,000 shares shall be designated Preferred Stock, par value \$.001 per share (the "Preferred Stock"), and of which Preferred Stock 2,500,000 shares shall be designated Series A Convertible Preferred Stock (the "Series A Preferred Stock").

Section 2. Preferred Stock. The Preferred Stock may be issued in one or more series. The Board of Directors is hereby expressly authorized to issue the shares of Preferred Stock in such series and to fix from time to time before issuance the number of shares of Preferred Stock to be included in any series and the designation, relative rights, preferences and limitations of all shares of Preferred Stock of such series. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, without limitation thereto, the determination of any or all of the following, and the shares of each series of Preferred Stock may vary from the shares of any other series of Preferred Stock in the following respects:

(a) The number of shares of Preferred Stock constituting such series and the designation thereof to distinguish the shares of such series of Preferred Stock from the shares of all other series of Preferred Stock;

(b) The annual dividend rate, if any, on the shares of such series of Preferred Stock and whether such dividends shall be cumulative and, if cumulative, the date from which dividends shall accumulate;

(c) The redemption price or prices for the particular series of Preferred Stock, if redeemable, and the terms and conditions of such redemption;

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(H02000007051 4)

(d) The preference, if any, of shares of such series of Preferred Stock in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation;

(e) The voting rights of shares of such series of Preferred Stock, if any, in addition to the voting rights prescribed by law and the terms of exercise of such voting rights;

(f) The right, if any, of shares of such series of Preferred Stock to be converted into shares of any other series or class of capital stock of the Corporation and the terms and conditions of such conversion; and

(g) Any other relative rights, preferences and limitations of such series of Preferred Stock.

Section 3. Series A Convertible Preferred Stock. Each holder of Series A Preferred Stock shall be entitled to the relative rights, preferences and limitations as follows:

(a) Dividends. Holders of the Series A Preferred Stock shall be entitled to receive an annual cumulative cash dividend equal to \$.08 per share of Series A Preferred Stock, and which dividend shall start to accrue commencing on such date which is one hundred eighty days (180) days after the date of the filing of these Articles of Amendment to the Corporation's Articles of Incorporation with the Secretary of State of the State of Florida; provided that no dividend shall be required to be declared by the Board of Directors of the Corporation, nor shall the Corporation be required to pay any dividend, before such date which is five hundred forty five (545) days after the date of the filing of these Articles of Amendment to the Corporation's Articles of Incorporation with the Secretary of State of the State of Florida. No dividend shall be declared or paid on the Common Stock unless and until all accrued and unpaid dividends have been paid on the Series A Preferred Stock. Dividends shall only be payable on shares of Series A Preferred Stock then outstanding on the last day of a calendar quarter, and shall accrue quarterly as of such last day of such calendar quarter. Such dividends hereunder shall only be paid out of funds legally available for such purpose, and as of such date as declared by the affirmative vote of a majority of the Board of Directors of the Corporation.

(b) Liquidation.

(1) Liquidating Event. In the event of a liquidation, dissolution or winding up of the Corporation (each such event considered a "Liquidating Event"), no distribution shall be made to the holders of any shares of Common Stock, or any shares of capital stock of the Corporation hereafter created that do not expressly rank *pari passu* with, or senior to, the Series A Preferred Stock (the "Senior Securities") upon such Liquidating Event, unless, prior thereto, the holders of the Series A Preferred Stock shall have received the Liquidation Preference (as defined below) with respect to each share of then outstanding Series A Preferred Stock. If upon the occurrence of a Liquidating Event, the assets and funds available for distribution among the holders of the then outstanding shares of Series A Preferred Stock and the holders of the then outstanding shares of Senior Securities shall be insufficient to permit the payment to such holders of the preferential amounts payable thereon, then the entire assets and funds of the Corporation legally available for distribution to such holders of such shares of Series A Preferred Stock shall be distributed ratably among such shares in proportion to the ratio that the

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Liquidation Preference payable on each such share of then outstanding Series A Preferred Stock bears to the aggregate Liquidation Preference payable on all such shares of Series A Preferred Stock. Except as provided by law, upon any such Liquidating Event, after the holders of then outstanding shares of Series A Preferred Stock and the holders of the then outstanding shares of Senior Securities shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of such shares, the remaining net assets of the Corporation shall be distributed to the other shareholders of the Corporation in accordance with their respective equity interests.

(2) Merger, Sale or Tender Offer. In the case of any: (i) merger of the Corporation, (ii) sale by the Corporation of all or substantially all of the assets of the Corporation in one or a series of related transactions, or (iii) tender offer or other business combination in which the shareholders of the Corporation owning a majority of the voting securities of the Corporation prior to such transaction do not own a majority of the voting securities of the surviving entity, each such transaction shall also be deemed a Liquidating Event and the Corporation shall be required to distribute, upon consummation of and as a condition to such transaction, an amount equal to the Liquidation Preference with respect to each then outstanding share of Series A Preferred Stock. Notwithstanding the foregoing, a merger, sale by the Corporation of all or substantially all of its assets, or tender offer or other business combination shall not be deemed a Liquidating Event for purposes hereof, if the holders of a majority of the then outstanding shares of Series A Preferred Stock either waive in writing the provisions of the preceding sentence requiring the distribution of the Liquidation Preference, or vote in favor of or participate in any such merger, sale or tender offer or other business combination. The provision of this Section shall similarly apply to successive such events.

(3) Liquidation Preference. The Liquidation Preference shall be an amount equal to \$1.00 per share of Series A Preferred Stock, plus all accrued but unpaid dividends with respect to such share, as of the date of consummation of the Liquidation Event. Holders of Series A Preferred Stock shall not be entitled to any additional distribution in excess of the Liquidation Preference in the event of any Liquidating Event.

(c) Voting Rights. Except as otherwise required under Florida law or as provided in these Articles of Incorporation, as amended, the shares of Series A Preferred Stock shall vote together as one class with the holders of the Corporation's Common Stock. Each holder of shares of Series A Preferred Stock shall be entitled to such number of votes as shall equal the whole number of shares of the Corporation's Common Stock into which such holder's then outstanding shares of Series A Preferred Stock are then fully convertible into, as provided for herein.

(d) Conversion. Subject to and upon compliance with the provisions of this Section 3(d), and subject to applicable law and regulation, at any time, any holder of outstanding shares of Series A Preferred Stock shall have the right, at such holder's option, to convert all or any portion of such holder's outstanding shares of Series A Preferred Stock into a whole number of shares of fully paid and nonassessable shares of Common Stock as provided below:

(H02000007051 4)

(1) Conversion Price. The initial conversion price shall be equal to \$.7933 per share of Series A Preferred Stock, and which conversion price may be adjusted from time to time hereafter in accordance with this Section 3(d) (the "Conversion Price"). Except with respect to an Excluded Transaction (as defined below), if and whenever on or after the date of issuance of shares of the Series A Preferred Stock, the Corporation issues or sells, or in accordance with Section 3(d)(3) hereof, is deemed to have issued or sold, any shares of its Common Stock, or any securities exercisable for, convertible into or exchangeable for shares of Common Stock ("Convertible Securities"), for consideration on a per share basis less than the Conversion Price in effect immediately prior to the time of such issuance or sale, then upon such issuance or sale, the Conversion Price shall be adjusted to an amount determined by dividing (a) the sum of (1) the product derived by multiplying (i) the Conversion Price in effect immediately prior to such issue or sale times (ii) the number of shares of Common Stock Deemed Outstanding, as defined hereafter, immediately prior to such issue or sale, plus (2) the consideration, if any received (or deemed received pursuant to Section 3(d)(3)(ii) below) by the Corporation upon such issue or sale, by (b) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale. The number of shares of Common Stock issuable upon conversion of each share of then outstanding Series A Preferred Stock shall equal \$1.00 divided by the Conversion Price, as adjusted above. For purposes hereof, the "Common Stock Deemed Outstanding" shall mean, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock issuable upon the conversion in full of all Series A Preferred Stock outstanding at such time, plus the number of shares of Common Stock issuable upon the exercise or conversion in full of all Convertible Securities outstanding at such time, whether or not the Convertible Securities are convertible or exercisable into shares of Common Stock at such time.

(2) Conversion Procedure.

(i) Conversion Date and Notice. Each conversion of outstanding shares of Series A Preferred Stock shall be deemed to be effective as of the close of business on the effective date of such conversion (the "Conversion Date"), specified in a written notice (the "Conversion Notice"); provided, however, that the Conversion Date shall not be a date earlier than the date which is five (5) days from the date such Conversion Notice is given, or if no such Conversion Date is specified, the Conversion Date shall be such date five (5) days from the date of such Conversion Notice. Such Conversion Notice shall be accompanied by the certificate(s) representing the Series A Preferred Stock to be converted, duly endorsed and delivered to the Corporation at its principal place of business, or as otherwise directed by the Corporation in writing, together with any and all documentation reasonably requested by the Corporation. Notwithstanding anything contained herein to the contrary, the effectiveness of any such conversion shall be subject to compliance with applicable law and/or regulation, the receipt by the Corporation of the certificate(s) representing the number of shares of Series A Preferred Stock to be so converted, the receipt by the Corporation of all documentation reasonable requested by the Corporation, including stock powers duly endorsed for transfer with signatures medallion guaranteed, and the payment of any stock transfer taxes, if required. Effective as of the Conversion Date, the rights of the holder of such shares of Series A Preferred Stock as such holder shall cease, and such holder shall be

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deemed to have become the holder of record of the shares of Common Stock represented thereby.

(ii) Delivery of Certificates. As soon as practicable after the Conversion Date (but in any event within ten (10) business days after the holder has delivered the certificates evidencing the shares of Series A Preferred Stock being converted into shares of Common Stock and all other documentation required hereunder), the Corporation shall deliver to the converting holder of such shares of Series A Preferred Stock:

(x) a certificate or certificates representing, in the aggregate, the number of shares of Common Stock issued upon such conversion and in such denomination(s) as the converting holder shall specify, and a check for cash with respect to any fractional interest in a share of Common Stock as provided in clause (iv) of this Section 3(d)(2); and

(y) a certificate representing any shares of Series A Preferred Stock that were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but that were not converted.

(iii) Reservation of Shares. 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 issuance upon the conversion of shares of Series A Preferred Stock, at such time such number of shares of Common Stock as are issuable upon the conversion of all outstanding shares of Series A Preferred Stock.

(iv) Fractional Shares. No fractional shares of Common Stock or script shall be issued upon conversion of shares of the Series A Preferred Stock. If more than one share of Series A Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Preferred Stock so surrendered. Instead of any fractional shares of Common Stock that would otherwise be issuable upon conversion of any shares of Series A Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest equal to the then fair market value of such fractional interest as determined by the Corporation's Board of Directors.

(3) Effect on Conversion Price Upon Certain Events. For purposes of determining the adjusted Conversion Price under this Section 3(d), the following shall be applicable:

(i) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Securities (other than pursuant to any Excluded Transaction, as defined below), whether or not the rights to exercise, convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for

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which Common Stock is issuable upon such exercise, conversion or exchange is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon exercise, conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (a) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the cumulative minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange thereof and, if applicable, the exercise, conversion and exchange of any other Convertible Securities that such Convertible Securities may be converted into or exchanged for, by (b) the total maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities. No further adjustment of the Conversion Price shall be made when any shares of Common Stock and, if applicable, any other Convertible Securities, are actually issued upon the exercise, conversion or exchange of such Convertible Securities.

(ii) Change in Exercise Price or Conversion Rate. If the additional consideration payable to the Corporation upon the exercise, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for Common Stock changes at any time, the Conversion Price in effect at the time of such change shall be readjusted to the Conversion Price that would have been in effect at such time had such Convertible Securities that are still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time such Convertible Securities were initially granted, issued or sold; and on the termination date of any right to exercise, convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder shall be increased to the Conversion Price that would have been in effect at the time of such termination or expiration had such Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued. Notwithstanding anything contained herein to the contrary, no adjustment in the Conversion Price shall be required hereunder in the event of any change in the exercise or conversion price of any Convertible Securities, as a consequence of the anti-dilution provisions set forth in such instruments evidencing such Convertible Securities.

(4) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately reduced, and conversely, in the event the outstanding shares of Common Stock shall be combined (by reverse stock split or otherwise) into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

(5) Excluded Transactions. For purposes hereof, "Excluded Transaction" shall mean any issuance of capital stock or other securities or Convertible Securities of the

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Corporation: (i) to directors, officers, employees or consultants of the Corporation pursuant to the Corporation's stock option plan or other employee stock incentive program, (ii) in connection with bona fide arm's-length mergers or acquisitions (including technology or asset acquisitions) by the Corporation that are approved by the Corporation's Board of Directors, (iii) to the public pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, (iv) upon exercise, exchange or conversion of options, warrants and other Convertible Securities outstanding as of date hereof, in accordance with the terms thereof, (v) in connection with any stock split, stock dividend or recapitalization, and/or (vi) in connection with any dividend or distribution on the Series A Preferred Stock.

(6) Valid Issuance. All shares of Common Stock that may be issued upon conversion of shares of Series A Preferred Stock in accordance with these Articles of Incorporation, as amended, and in accordance with the terms of such Series A Preferred Stock, and provided such issuance is in accordance with applicable law and regulation, will upon issuance be duly and validly issued, fully paid and nonassessable and free from all liens and charges with respect to the issuance thereof, and the Corporation shall take no action that will cause a contrary result.

(7) No Preemptive Rights. Except as otherwise provided herein, no holder of shares of Series A Preferred Stock, nor of any security convertible into, nor of any warrant, option or right to purchase, subscribe for or otherwise acquire Series A Preferred Stock, whether now or hereafter authorized, shall have any preemptive right whatsoever to purchase, subscribe for or otherwise acquire, stock of any class of the Corporation nor of any security convertible into, nor of any warrant, option or right to purchase, subscribe for or otherwise acquire, stock of any class of the Corporation, whether now or hereafter authorized.

(8) Exclusion of Other Rights. Except as may otherwise be required by applicable law and/or regulation, the shares of Series A Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth in these Articles of Incorporation, as amended.

(9) Identical Rights. Each outstanding share of Series A Preferred Stock shall have the same relative rights, preferences and limitations as, and shall be identical in all respects with, all other outstanding shares of the Series A Preferred Stock.

(10) Certificates. So long as any shares of the Series A Preferred Stock are outstanding, there shall be set forth on the face or back of each stock certificate issued by the Corporation a statement that the Corporation shall furnish without charge to each shareholder who so requests, a full statement of the designation and relative rights, preferences and limitations of each class of stock or series thereof that the Corporation is authorized to issue and of the authority of the Board of Directors to designate and fix the relative rights, preferences and limitations of each series.

### ITEM III

These amendments shall be effective as of January 8, 2002.



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**ITEM IV**

These amendments were duly adopted and approved of by the unanimous written consent of the Board of Directors of the Corporation on January 8, 2002, and by the unanimous written consent of all of the shareholders of the Corporation on January 8, 2002, in accordance with the Florida Business Corporation Act.

**ITEM V**

Except as hereby amended, the Articles of Incorporation, as previously amended, of the Corporation shall remain the same.

*[Signature page follows]*

(H02000007051 4)

IN WITNESS WHEREOF, these Articles of Amendment to the Articles of Incorporation of eAppealSolutions, Inc. are hereby executed as of this 8<sup>th</sup> day of January, 2002

**EAPPEALSOLUTIONS, INC.**

By:  William D. Kirsh, President