

S20562



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REFERENCE : 437621 4311247

AUTHORIZATION : Patricia Pzyt

COST LIMIT : \$ 35.00

ORDER DATE : June 23, 1997

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CUSTOMER NO: 4311247

CUSTOMER: Marian Gustafson, Legal Asst
Hertzog Calamari & Gleason
100 Park Avenue

New York, NY 10017-5582

DOMESTIC AMENDMENT FILING

NAME: 6/25/97 AUTHORGENICS, INC.

EFFECTIVE DATE: 10/11

XX ARTICLES OF AMENDMENT
RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

CERTIFIED COPY
XX PLAIN STAMPED COPY
CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Deborah Schroder

EXAMINER'S INITIALS: _____

FILED
97 JUN 24 AM 11:04
SECTION OF STATE
TALLAHASSEE, FLORIDA
Amend

RECEIVED
97 JUN 24 PM 1:53
DIVISION OF CORP. REGISTRATION

ARTICLES OF AMENDMENT
TO
AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
AUTHORGENICS, INC.

97 JUN 24 AM 11:05
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

1. The name of the Corporation is "Authorgenics, Inc."

2. The Board of Directors of the Corporation, by unanimous written consent on June 19, 1997, duly adopted the following resolution providing for the number, terms, designation, relative rights, powers, preferences, limitations and restrictions of the shares of the Series A Preferred Stock, \$.01 par value, of the Corporation:

"RESOLVED, that pursuant to the authority vested in the Board of Directors of the Corporation and in accordance with Section 607.0602 of the Florida Business Corporation Act and the provisions of the Corporation's Certificate of Incorporation, a series of the preferred stock, par value \$.01 per share (the "Preferred Stock"), of the Corporation is hereby created as the Series A Preferred Stock, and that the designation and number of shares thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations and restrictions thereof, are as follows:

DESIGNATION OF THE SERIES A PREFERRED STOCK

SECTION 1. Designation of Amount; Ranking. Seven Thousand and Five Hundred (7,500) shares of the Preferred Stock shall be designated Series A Preferred Stock (the "Series A Preferred Stock"). The Series A Preferred Stock shall rank senior to all shares of common stock, \$.001 par value, of the Corporation ("Common Stock"), and all other classes and series of equity securities of the Corporation (collectively, the "Junior Stock") with respect to dividend rights, rights of redemption and rights of liquidation.

SECTION 2. Dividends. (a) The holders of the Series A Preferred Stock shall be entitled to receive dividends when, as and if declared by the Board of Directors of the Corporation (the "Board"). In the event any dividend or distribution, whether cash or non-cash (other than Common Stock), is declared, paid or set aside for payment with respect to any shares of Junior Stock prior to an underwritten public offering of the Corporation's equity securities registered under the Securities Act of 1933, as amended (the "Securities Act"), a comparable dividend or distribution must be simultaneously declared, paid or set aside for payment with respect to the outstanding shares of the Series A Preferred Stock. In the event any such

dividend or distribution is declared, paid or set aside for payment with respect to any shares of Junior Stock, each holder of shares of the Series A Preferred Stock shall be paid such comparable dividend or receive such comparable distribution on the basis of the number of shares of Common Stock into which such holder's shares of such Series A Preferred Stock are then convertible, as hereinafter provided, as of the record date fixed for determination of holders of Junior Stock entitled to receive such dividend or distribution.

(b) Notwithstanding anything herein to the contrary, no dividends or distribution shall be declared, paid or set aside for any shares of Junior Stock unless, prior to such time, the holders of the Series A Preferred Stock shall have first received all declared and unpaid dividends.

(c) Dividends on the shares of capital stock of the Corporation shall be payable only out of funds legally available therefor.

SECTION 3. Liquidation Preference. (a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, or any sale of the Corporation, sale, conveyance or other disposition of all or substantially all of the Corporation's assets, merger or consolidation of the Corporation with or into any other entity (other than a merger of the Corporation in which the stockholders of the Corporation retain a majority of the voting power of the surviving corporation) (collectively, "Liquidation"), the holders of shares of the Series A Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution, whether from capital, surplus or earnings, an amount equal to \$400.00 per share of the Series A Preferred Stock (appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes hereafter effected and referred to herein as the "Original Purchase Price"), plus all declared and unpaid dividends, if any, before any payment shall be made or any asset distributed to the holders of any Junior Stock. If, upon any Liquidation, the assets available for distribution shall be insufficient to pay the holders of all outstanding shares of the Series A Preferred Stock of the full preferential amounts to which they respectively shall be entitled, the holders of such shares shall share in any such distribution of any assets of the Corporation in proportion to the full amounts to which such holders of the Series A Preferred Stock would otherwise be entitled in respect of their shares if all amounts payable on or with respect to such shares were paid in full. After distribution to the

holders of the Series A Preferred Stock the full preferential amounts to which they shall be entitled, the remaining assets, if any available for distribution shall be distributed to the holders of the Junior Stock.

(b) The Corporation shall mail a written notice of the Liquidation to each holder of record of shares of Series A Preferred Stock, at his, her or its post office address last shown on the records of the Corporation, not less than 30 days prior to the date on which the Liquidation is to be consummated.

(c) Nothing herein shall affect in any way the right of each holder of shares of the Series A Preferred Stock to convert such shares at any time up to the close of business on the day preceding the consummation of the Liquidation.

(d) The value of securities and property paid or distributed in accordance with this Section 3 shall be computed at fair market value as determined by the Board in good faith.

SECTION 4. Redemption.

(a) If the Corporation shall have failed to consummate an underwritten initial public offering of the Corporation's equity securities registered under the Securities Act yielding to the Corporation gross proceeds of not less than \$20 million at price of not less than \$12.00 per share of Common Stock (appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes hereafter effected and referred to herein as the "Qualified Offering") before the seventh anniversary of the first date of issuance of a share of the Series A Preferred Stock (the "Original Issuance Date") and if requested by any holder of the Series A Preferred Stock, the Corporation shall offer to redeem any and all outstanding shares of Series A Preferred Stock, from funds legally available therefor, not later than 90 days following receipt of the first stockholder request pursuant to this Section 4 (the "Redemption Date"). The Corporation shall redeem all shares of Series A Preferred Stock properly surrendered for redemption by paying for each such share an amount equal to the greater of (i) the sum of the Original Purchase Price plus all declared and unpaid dividends, if any, through the Redemption Date and (ii) Fair Market Value (as hereinafter defined) of a share of the Series A Preferred Stock as of the seventh anniversary of the Original Issuance Date. Such greater sum shall be referred to as the "Redemption Price."

(b) Promptly following receipt by the Corporation of a request for redemption, the Board and the holders of not less than a majority of the outstanding Series A Preferred Stock shall jointly appoint two valuation experts who shall have no ownership interest in the Corporation (the "Valuation Experts"). The Valuation Experts shall appraise the fair market value of the Corporation's equity securities (net of all liabilities) and deliver to the Board written appraisals not later than 40 days prior to the Redemption Date. The two appraisals shall be averaged and the Redemption Price shall be derived from the average of such appraisals. All such appraisals shall take into account all relevant factors affecting the fair market value of the Corporation's securities, including but not limited to revenue, profits, backlog, prospects, assets, liabilities and technology developments, recent sales and resales of the Corporation's securities. Such appraisals shall not contain any discount for a minority interest. The Corporation shall pay all fees and expenses of the Valuation Experts.

(c) Not less than 30 days prior to the Redemption Date, the Corporation shall mail written notice of the redemption offer to all holders of record of the Series A Preferred Stock, stating the Redemption Date, the Redemption Price, and the then current Conversion Price (as hereinafter defined) for the Series A Preferred Stock. Such notice shall offer to each such holder to surrender to the Corporation on the Redemption Date at the place designated in the notice such holder's certificate or certificates representing the shares to be redeemed. On or before the Redemption Date, the holder of each share of the Series A Preferred Stock called for redemption may surrender the certificate evidencing such shares to the Corporation at the place designated in such notice and shall thereupon be entitled to receive payment of the Redemption Price for the Series A Preferred Stock surrendered. From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of such shares (except the right to receive the Redemption Price upon surrender of their certificate or certificates) shall cease with respect to such shares and such shares shall not thereafter be deemed to be outstanding for any purpose whatsoever.

(d) If (i) the funds of the Corporation legally available for redemption of shares of the Series A Preferred Stock on the Redemption Date shall be insufficient to redeem the total number of shares of the Series A Preferred Stock properly surrendered for redemption, (ii) the redemption of shares of the Series A Preferred Stock would result in a default under any of the Corporation's agreements relating to the borrowing of money or (iii) the working capital of

the Corporation would be materially and adversely impaired, as determined by the Board in good faith, as a result of the redemption of shares of the Series A Preferred Stock properly surrendered for redemption, then those funds which are legally available and which may be paid without causing such a default and without materially and adversely impairing the Company's working capital shall be used to pay the Redemption Price for the shares of Series A Preferred Stock properly surrendered for redemption and the remaining unpaid Redemption Price shall be paid in the form of promissory notes issued by the Corporation to the holders of the redeemed Series A Preferred Stock. Such notes shall bear a fixed interest rate at the then existing prime rate as determined by the Board in good faith. All of such notes shall mature not later than one year from Redemption Date. The funds and notes comprising the Redemption Price shall be distributed to the holders of the redeemed Series A Preferred Stock pro rata based upon the number of shares properly surrendered to the Corporation pursuant to this Section 4.

(e) Nothing herein shall affect in any way the right of each holder of shares of the Series A Preferred Stock to convert such shares at any time up to the close of business on the day preceding the Redemption Date in accordance with Section 6 hereof. The shares of the Series A Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein.

(f) After the Redemption Date, the Corporation shall have no further obligation to redeem the shares of Series A Preferred Stock under this Section 4.

SECTION 5. Voting Rights. (a) In addition to the rights hereinafter provided in this Section 5 and any other rights provided by applicable law or the By-Laws of the Corporation, the holder of each share of Common Stock shall have one vote and the holder of each share of the Series A Preferred Stock 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 Stock could be converted, pursuant to Section 6 hereof, at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date shall be established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of the Series A Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of the Series A Preferred Stock held by

each holder could be converted), be rounded up to the nearest whole number. Holders of Common Stock and the Series A Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the By-Laws of the Corporation.

(b) The Corporation shall not, and shall not permit any subsidiary, any employee stock ownership plan or other employee plan with respect to the Corporation to, without obtaining the affirmative prior consent or approval of the holders of not less than 67% of the then outstanding shares of the Series A Preferred Stock, voting separately as a class:

(i) issue or sell any class or series of capital stock or rights, options or warrants convertible into or exercisable or exchangeable for capital stock, which in each case, as to the payment of dividends, distribution of assets or redemption, including, without limitation, distribution to be made upon a Liquidation, is senior to or on a parity with the Series A Preferred Stock;

(ii) reclassify the shares of any class or series of Junior Stock into shares of any class or series of capital stock ranking, either as to payment of dividends, distributions of assets or redemptions, including, without limitation, distributions to be made upon a Liquidation, senior to or on a parity with the Series A Preferred Stock;

(iii) alter or change the terms, designations, powers, preferences or relative, participating, optional or other special rights, or the qualifications, limitations or restrictions, of the Series A Preferred Stock; or

(iv) repurchase, retire or redeem any shares of capital stock of the Corporation (other than the Series A Preferred Stock pursuant to Section 4 hereof), unless all holders of the Series A Preferred Stock shall have the right to participate simultaneously in such repurchase, retirement or redemption, upon the same terms and conditions, on a proportionate basis computed for this purpose as if the shares of the Series A Preferred Stock shall have been converted into Common Stock pursuant to Section 6 hereof on the date of such repurchase, retirement or redemption or, if any, the record date fixed for any such action.

(c) No holder of shares of the Junior Stock or the Series A Preferred Stock of the Corporation shall have any cumulative voting rights.

SECTION 6. Conversion Right.

(a)(i) At the option of each holder of the Series A Preferred Stock, all or any portion of the shares of the Series A Preferred Stock shall be convertible at any time and from time to time, into shares of Common Stock. Upon any such conversion, each share of the Series A Preferred Stock shall be converted into such number of fully paid and nonassessable shares of Common Stock equal to the quotient of (A) the Original Purchase Price of such share of the Series A Preferred Stock divided by (B) the Conversion Price (as hereinafter defined).

(ii) Each share of the Series A Preferred Stock shall automatically be converted, without any action on the part of the holder thereof, into shares of Common Stock upon the closing of the Qualified Offering (the "Automatic Conversion"). In the event of the Automatic Conversion, the holders entitled to receive Common Stock issuable upon such conversion shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of the Qualified Offering. Upon the Automatic Conversion, each share of the Series A Preferred Stock shall be converted into such number of fully paid and nonassessable shares of Common Stock equal to the quotient of (A) the Original Purchase Price divided by (B) the Conversion Price.

(iii) For the purpose of determining the interest of the holders of Series A Preferred Stock in the shares of Common Stock underlying such shares of Series A Preferred Stock (whether for the purpose of determining the holders' ratable interest in dividends, distributions on Liquidation, voting rights or for repurchases, redemptions or retirement of shares), the "Conversion Price" shall be deemed initially to be \$4.0909 and shall be subject to adjustment pursuant to the provisions of Section 7 hereof. The number of shares of Common Stock into which the Series A Preferred Stock shall be convertible from time to time is hereinafter referred to as the "Conversion Rate."

(b) In order to convert shares of the Series A Preferred Stock into shares of Common Stock of the Corporation, the holder thereof shall surrender at the principal offices of the Corporation or any transfer agent of the Corporation for the Series A Preferred Stock, the

certificate or certificates therefor, duly endorsed to the Corporation or in blank, and give written notice to the Corporation at such office that such holder elects to convert such shares. Shares of the Series A Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the day of the surrender of such shares for conversion as herein provided or in the case of the Automatic Conversion, on the date of closing of the Qualified Offering, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock at such time; provided, that in the event of the Automatic Conversion pursuant to Section (b)(ii) hereof, the outstanding shares of the Series A Preferred Stock shall be converted automatically and simultaneously without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon the Automatic Conversion unless the certificates evidencing such shares of the Series A Preferred Stock are either delivered to the Corporation or its transfer agent as provided above or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Series A Preferred Stock surrendered for conversion, the Corporation shall issue and deliver to or upon the written order of the holder of the certificates so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Series A Preferred Stock representing the unconverted portion of the certificate so surrendered.

(c) In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board in good faith. As promptly as practicable on or after the date of conversion of the shares of the Series A Preferred Stock, the Corporation shall issue and deliver or cause to be delivered at such office a certificate or certificates for the number of shares of Common Stock issuable upon such conversion and, if applicable, a check payable to the holder for any declared and unpaid dividends with respect to the shares of converted Series A Preferred

Stock and any amounts payable in respect of fractional shares of Common Stock.

(d) In case any shares of the Series A Preferred Stock shall be converted pursuant to Section 6, the shares of Series A Preferred Stock so converted shall resume the status of authorized but unissued shares of Preferred Stock.

SECTION 7. Adjustments to Conversion Price. The Conversion Price shall be subject to adjustment from time to time as follows:

(a) If the Corporation shall at any time or from time to time after the Original Issuance Date, issue any shares of Common Stock (or be deemed to have issued any shares of Common Stock as provided herein) other than Excluded Securities (as hereinafter defined) in a transaction exempt from registration under the Securities Act without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Common Stock, the Conversion Price in effect immediately prior to each such issuance shall forthwith be lowered to a price equal to the amount of such lower consideration per share.

For the purposes of any adjustment of the Conversion Price pursuant to Section 7(a), the following provisions shall be applicable:

(i) in the case of the issuance of Common Stock for cash the consideration shall be deemed to be the amount of cash paid therefor before deducting therefrom any discounts, commissions or other similar expenses allowed paid to the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof;

(ii) in the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board;

(iii) in the case of the issuance of Common Stock without consideration, the consideration shall be deemed to be \$.01 per share;

(iv) in the case of the issuance of (x) options to purchase or rights to subscribe for Common Stock, (y) securities by their terms convertible into or exchangeable for Common Stock or (z) options to

purchase or rights to subscribe for such convertible or exchangeable securities:

(A) the shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subdivisions (i), (ii) and (iii) above), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(B) the shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subdivisions (i), (ii) and (iii) above);

(C) on any change in the exercise price of Common Stock deliverable upon exercise of any such options or rights or conversions of or exchanges for such securities, other than a change resulting from the antidilution provisions thereof, the Conversion Price shall be readjusted to the Conversion Price as would have been obtained had the adjustment, made upon the issuance of such options, rights or securities not converted prior to such change or options or rights related to such securities not converted prior to such change, been made upon the basis of such change; and

(D) on the expiration of all such options or rights, the termination of all such rights to convert or exchange or the expiration of all options or rights related to such convertible or exchangeable securities in each case having been issued by the Corporation for the same consideration (as determined pursuant to subdivision (i), (ii) and (iii) above), the Conversion

Price as would have been obtained had the adjustment made upon the issuance of such options, rights, securities or options or rights related to such securities not been made; and

(v) "Excluded Securities" shall mean: (A) shares of Common Stock issued upon conversion of the Series A Preferred Stock, (B) securities of the Corporation issued in connection with antidilution adjustments, (C) shares of Common Stock or other equity securities of the Corporation issued as a stock dividend or upon any stock split or other subdivision or combination of the Common Stock, (D) shares and options to purchase shares of Common Stock (including any shares issuable upon the exercise thereof issued) to employees of and consultants to the Corporation by the Board or any committee thereof pursuant to the Corporation's 1997 Performance Equity Plan up to a maximum of 1,000,000 shares of Common Stock and (E) any securities or any option, warrant or other right to acquire equity securities of the Corporation (including any shares issuable upon exercise or conversion of exercisable or convertible securities) issued to a bank or other similar lending institution (as determined by the Board) in connection with any financing of the Corporation.

(b) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, following the record date fixed for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up, the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of the Series A Preferred Stock shall be increased in proportion to such increase in outstanding shares.

(c) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is decreased by a combination of the outstanding shares of Common Stock, then, following the record date for such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(d) In case, at any time after the Original Issuance Date, of any capital reorganization, or any reclassification of the stock of the Corporation (other than

a change in par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into any other person or entity (other than a consolidation or merger in which the Corporation is the continuing corporation and which does not result in any change in the Common Stock) or of the sale or other disposition of all or substantially all the properties and assets of the Corporation to any other person or entity, each share of the Series A Preferred Stock shall after such reorganization, reclassification, consolidation, merger, sale or other disposition be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the corporation resulting from such consolidation or surviving such merger or to which such properties and assets shall have been sold or otherwise disposed to which the holder of the number of shares of Common Stock deliverable (immediately prior to the time of such reorganization, reclassification, consolidation, merger, sale or other disposition) upon conversion of such shares would have been entitled upon such reorganization, reclassification, consolidation, merger, sale or other disposition. The provisions of Section 6 and this Section 7 shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(e)(i) If the Company shall not have completed the Qualified Offering by the last day of the Corporation's fiscal year which ends in calendar year 1999 (the "Reset Date"), the Board and the holders of not less than a majority of the outstanding Series A Preferred Stock shall jointly appoint two Valuation Experts. The Valuation Experts shall appraise the fair market value of the Corporation's equity securities (net of all liabilities) (the "Appraisal") and each shall deliver to the Board a written Appraisal report not later than 30 days after the Reset Date. The Corporation shall pay all fees and expenses of all Valuation Experts. All Appraisals shall take into account all relevant factors affecting the fair market value of the Corporation's equity securities, including but not limited to revenue, profits, backlog, prospects, assets, liabilities and technology developments, recent sales and resales of the Corporation's securities. All Appraisals shall take into account that the Company is not a publicly held entity but shall not contain any discount in value for a minority interest. If the Appraisal with a higher value is not greater than 110% of the Appraisal with the lower value, the two Appraisals shall be averaged, unless both Appraisals exceed \$100 million (the "Appraised Value"). If the Appraised Value is below \$100 million or if the

Appraisal having the higher value is greater than 110% of the Appraisal having the lower value (except if both Appraisals exceed \$100 million), the Board shall appoint one additional Valuation Expert who shall deliver an Appraisal to the Board in not later than 30 days. In such event, the two Appraisals closest in value shall be averaged and become the Appraised Value. If, prior to the Reset Date, the Corporation shall propose an underwritten initial public offering of its equity securities (other than the Qualified Offering) or if the Corporation shall propose a transaction which would result in a Change of Control (as hereinafter defined), and the value of the Corporation's equity securities (net of all liabilities) immediately prior to the consummation of any such transaction shall be less than \$100 million, such value shall constitute the Appraised Value for the purpose of this Section 7(e).

(ii) If both Appraisals exceed \$100 million, there shall be no adjustment to the Conversion Price.

(iii) If the Appraised Value shall be less than \$100 million, the Conversion Price will be adjusted as follows: (A) the Appraised Value shall be divided by two to create a new value (the "Reset Value"); (B) the aggregate Original Purchase Price for all shares of the Series A Preferred Stock sold by the Corporation shall be divided by the Reset Value to produce a quotient (the "Reset Ownership Percentage"); (C) 11,000,000 shall be divided by the sum of 1 minus the Reset Ownership Percentage to produce a quotient (the "Reset Fully-Diluted Shares"); (D) the sum of the Reset Fully-Diluted Shares minus 11,000,000 shall be divided by the number of shares of Common Stock issuable upon conversion of the Series A Preferred on the Original Issuance Date (assuming for this purpose all previously-issued shares of the Series A Preferred Stock were issued simultaneously on the Original Issuance Date) to produce a quotient (the "Reset Multiplier") and (E) the Conversion Price then in effect shall be divided by the Reset Multiplier to compute an adjusted Conversion Price to give effect to the Reset Value, provided, that the Reset Ownership Percentage shall not exceed a maximum of 16% (prorated to such smaller percentage if less than 7,500 shares of the Series A Preferred Stock shall be issued by the Corporation).

(iv) In no event shall the Conversion Price shall be increased pursuant to this Section 7(e). There shall be no more than one adjustment of the Conversion

Price pursuant to this Section 7(e) while the Series A Preferred Stock shall be outstanding.

(v) The adjustment of the Conversion Price shall become effective on the 90th day following the Reset Date, provided, that, if there shall be an initial public offering or Change of Control in which the Conversion Price shall be adjusted pursuant to this Section 7(e), the adjusted Conversion Price shall become effective immediately prior to the consummation of any such transaction.

(vi) A "Change of Control" shall mean: (A) any merger, recapitalization or other business combination of the Corporation with or into another corporation (other than a merger of the Corporation with or into a wholly-owned subsidiary of the Corporation with no change in beneficial ownership of the Corporation), (B) any sale, lease, exchange, or other transfer of all, or substantially all, of the assets of the Corporation or (1) any sale of the Corporation.

(f) All calculations pursuant to this Section 7 shall be made to the nearest one-hundredth (1/100) of a cent or to the nearest one-tenth (1/10) of a share of Common Stock, as the case may be.

(g) In the event the provisions of this Section 7 shall require that an adjustment shall become effective immediately after a record date for an event, the Corporation may defer until the occurrence of such event (i) issuing to the holder of any share of the Series A Preferred Stock converted after such record date and before the occurrence of such event the additional shares of capital stock issuable upon such conversion by reason of the adjustment required by such event over and above the shares of capital stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder any amount in cash in lieu of a fractional share of capital stock pursuant to Section 6(c) hereof.

(h) Upon the occurrence of each adjustment of the Conversion Rate pursuant to this Section 7, the Corporation shall compute such adjustment in accordance with the terms hereof and mail to each holder of the Series A Preferred Stock a certificate setting forth such adjustment, the Conversion Price after such adjustment and showing in detail the facts upon which such adjustment is based.

(i) In the event the Corporation shall propose to take any action of the types described in Sections 7(a), (b), (c), (d) and (e) then the Corporation shall give notice to each holder of the Series A Preferred Stock in the manner set forth in this Section 7(i), which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect to thereto as shall be reasonably necessary to indicate the effect of such action on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of shares of the Series A Preferred Stock. In the event any action requires the fixing of a record date, such notice shall be given at least 10 day prior the date so fixed, and in case of all other actions, such notice shall be given at least 20 days prior to the taking of any such proposed action. Failure to give such notice, or any defect therein, shall not effect the legality or validity of any such action.

(j) The Corporation shall pay any and all issue and other transactional taxes (other than income taxes) that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of the Series A Preferred Stock pursuant hereto.

(k) 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 Stock, 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 Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose."

* * *

IN WITNESS WHEREOF, the Corporation has caused this Articles of Amendment to be duly executed by its President and Secretary as of this 1st day of June, 1997.

By: 

Brian Staack
President

By: 

Stephen A. Ollendorff
Secretary