

06-27-2003



Tab settings

102483955

To the Honorable Commissioner of Patents, attached original documents or copy thereof.

1. Name of conveying party(ies):
TALK2 TECHNOLOGY, INC.

6-73 03

Additional names(s) of conveying party(ies) Yes No

2. Name and address of receiving party(ies):

Name: SPONTANEOUS TECHNOLOGY, INC.

Internal Address: Suite 600

Street Address: #5 Triad Center

City: Salt Lake City State: UT ZIP: 84180

Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other

Execution Date: October 30, 2002

4. Application number(s) or patent numbers(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

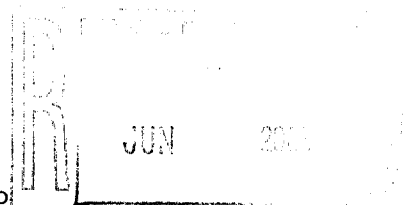
B. Patent No.(s)

See attached Exhibit A

See attached Exhibit A

04265287

Additional numbers attached? Yes No



5. Name and address of party to whom correspondence concerning document should be mailed:

Name: R. Burns Israelsen

Internal Address: 1000 Eagle Gate Tower

06/26/2003 LMUELLER 00000194 09265287

01 FC:8021 320.00 DP

Street Address: 60 East South Temple

City: Salt Lake City State: UT ZIP: 84111

6. Total number of applications and patents involved: 6

7. Total fee (37 CFR 3.41): \$ 320.00

- Enclosed - Any excess or insufficiency should be credited or debited to deposit account
- Authorized to be charged to deposit account

8. Deposit account number:

23-3178

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

R. Burns Israelsen

R. Burns Israelsen

June 23, 2003

Name of Person Signing

Signature

23

Date

Total number of pages including cover sheet, attachments, and document:

Exhibit A
Spontaneous Technology, Inc.
Patent Properties Subject to Name Change

WNS File No.	Serial No.	Filing Date	Patent No.	Issue Date
14999.17	09/265,287	9-Mar-99	6,434,594	13-Aug-02
14999.3	09/464,989	16-Dec-99	6,349,132	19-Feb-02
14999.19	09/735,443	12-Dec-00		
14999.22.1	09/767,465	22-Jan-01		
14999.17.2	09/829,673	10-Apr-01		
14999.39.1	09/854,308	11-May-01		
14999.33.1	09/887,215	22-Jun-01		
14999.2.1	09/464,990	16-Dec-99	6,327,572	4-Dec-01

FILED # C 23518-98
Order Use Only

OCT 30 2002

IN THE OFFICE OF
Dean Heller
DEAN HELLER SECRETARY OF STATE

DEAN HELLER
Secretary of State

202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684 5708



Important: Read attached instructions before completing form.

This Form is to Accompany Restated Articles of Incorporation
(Pursuant to NRS 78.403 or 82.371)
(This form is also to be used to accompany Restated Articles for
Limited-Liability Companies, Certificates of Limited Partnership
and Business Trusts)
- Remit in Duplicate -

1. Name of Nevada entity as last recorded in this office: _____
Talk2 Technology, Inc.

2. Indicate what changes have been made by checking the appropriate spaces."

- The entity name has been amended.
- The resident agent has been changed.
(attach Certificate of Acceptance from new resident agent)
- The purpose of the entity has been amended.
- The authorized shares have been amended.
- The directors, managers or general partners have been amended.
- The duration of the entity has been amended.
- IRS tax language has been added.
- Articles have been added to the articles or certificate.
- Articles have been deleted from the articles or certificate.

None of the above apply. The articles or certificate have been amended as follows:
(provide article numbers, if available)

* This form is to accompany Restated Articles which contain newly altered or amended articles. The Restated Articles must contain all of the requirements as set forth in the statutes for amending or altering Articles of Incorporation, Articles of Organization or Certificates of Limited Partnership.

IMPORTANT: Failure to include any of the above information and remit the proper fees may cause this filing to be rejected.

FILED # C 23518-98

**THIRD AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
TALK2 TECHNOLOGY, INC.**

OCT 30 2002

IN THE OFFICE OF
Don Hill
NEAN HILLER, SECRETARY OF STATE

Pursuant to Sections 78.390 and 78.403 of the Nevada Revised Statutes, the undersigned corporation adopts the following Third Amended and Restated Articles of Incorporation:

FIRST: The name of the Corporation is Talk2 Technology, Inc. (the "Corporation").

SECOND: The articles of incorporation of the Corporation were originally filed with the Secretary of State of Nevada on October 7, 1998 and amended and restated on September 20, 2000, and subsequently were amended on October 17, 2000 and December 11, 2000. A second amendment and restatement of the articles of incorporation were filed on June 20, 2001, and subsequently were amended on October 29, 2001.

THIRD: The Board of Directors of the Corporation has adopted resolutions to amend and restate the Corporation's articles of incorporation as provided herein pursuant to a Written Consent of the Board of Directors dated October 30, 2002.

FOURTH: The amendment and restatement of the Corporation's articles of incorporation has been duly approved by the required vote of the stockholders in accordance with Section 78.390 of the Nevada Revised Statutes, including separate class votes, and as otherwise required by the Corporation's articles of incorporation. The total number of outstanding shares of Series B Preferred Stock is 428,571, Series C Preferred Stock is 8,960,694 and Series D Preferred Stock is 14,875,508. The total number of outstanding shares of Common Stock is 26,525,223 and the total number of outstanding shares of Common Stock assuming conversion into Common Stock of all outstanding shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock is 53,985,064. The number of shares voting in favor of the amendment equaled or exceeded the votes required. The percentage votes required were (i) a majority of the voting power of the Corporation's outstanding Common Stock, Series B Preferred Stock, Series C Preferred Stock, and Series D Preferred Stock (voting on an as-converted into Common Stock basis), voting together as a single class, (ii) a majority of the outstanding shares of each class or series and (iii) at least two thirds of the outstanding shares of the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock, voting together as a single class.

FIFTH: The articles of incorporation of the Corporation shall be amended and restated to read in full as follows:

ARTICLE I

"The name of this corporation is Spontaneous Technology, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Nevada is 502 East John Street, Room E, Carson City, County of Carson City. The name of its registered agent at such address is CSC Services of Nevada, Inc.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the applicable provisions of the Nevada Revised Statutes governing corporations (the "Nevada Corporation Law").

ARTICLE IV

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the Corporation is authorized to issue is One Hundred Sixty Million Twenty-Two Thousand Four Hundred (160,022,400) shares, each with a par value of \$0.001 per share. One Hundred Fifteen Million (115,000,000) shares shall be Common Stock and Forty-Five Million Twenty-Two Thousand Four Hundred (45,022,400) shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by these Third Amended and Restated Articles of Incorporation, as subsequently amended (the "Articles of Incorporation") may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of Four Hundred Twenty-Eight Thousand Five Hundred Seventy-One (428,571) shares. The second series of Preferred Stock shall be designated "Series C Preferred Stock" and shall consist of Eight Million Nine Hundred Sixty Thousand Six Hundred Ninety-Four (8,960,694) shares. The third series of Preferred Stock shall be designated "Series D Preferred Stock" and shall consist of Twenty-One Million Two Hundred Twenty-Three Thousand Nine Hundred Thirteen (21,223,913) shares. The fourth series of Preferred Stock shall be designated "Series E Preferred Stock" and shall consist of Fourteen Million Four Hundred Nine Thousand Two Hundred Twenty-Two (14,409,222) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock (collectively, the "Preferred Stock") are as set forth below in this Article IV(B).

1. Dividend Provisions.

(a) **Cumulative Dividends.** The holders of shares of (i) Series C Preferred Stock shall be entitled to receive cumulative dividends at the rate of \$0.208 per share, (ii) Series D Preferred Stock shall be entitled to receive cumulative dividends at the rate of \$0.0452 per share and (iii) Series E Preferred Stock shall be entitled to receive cumulative dividends at the rate of \$0.00694 per share (as all such dividend rates may be adjusted for any stock dividends, combinations or splits with respect to such shares). All such cumulative dividends shall be payable out of funds legally available therefor and shall be paid in the following order of preference: (i) first, to the holders of Series E Preferred Stock; (ii) second, and only after all cumulative dividends have been paid to the holders of Series E Preferred Stock,

to the holders of Series D Preferred Stock, and (iii) third, and only after all cumulative dividends have been paid to the holders of Series D and E Preferred Stock, to the holders of Series C Preferred Stock. Such dividends shall be payable only when, as and if declared by the Corporation's Board of Directors and shall accrue and be cumulative from, with respect to Series E Preferred Stock, the date on which any share of Series E Preferred Stock is first issued and, with respect to Series D and C Preferred Stock, the respective dates on which shares of Series D and C Preferred Stock were first issued. No dividends (other than those payable solely in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) shall be paid on the Series B Preferred Stock or on the Common Stock of the Corporation during any fiscal year of the Corporation until the dividends described above shall have been paid or declared and set apart during that fiscal year.

(b) **Other Dividends.** If, after the dividends in the full cumulative, preferential amount specified in Section 1(b) for the Series E, D and C Preferred Stock have been paid or declared and set apart, the Board of Directors shall declare additional dividends out of funds legally available therefor in that fiscal year, then such additional dividends shall be declared pro rata on the Common Stock and the Preferred Stock on a *pari passu* basis according to the number of shares of Common Stock outstanding and the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted into Common Stock at the then applicable Conversion Price pursuant to Section 4 hereof.

(c) **Limitations on Distributions.** So long as any shares of Series E Preferred Stock remain outstanding, the Corporation shall not declare or make any a distribution on its shares of capital stock payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights, unless such distribution is made to the holders of the Series E Preferred Stock pursuant to a Liquidation Event in accordance with the provisions of Section 2 hereof or a redemption in accordance with the terms of Section 3 hereof.

2. **Liquidation.**

(a) **Series E Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (a "**Liquidation Event**"), the holders of the Series E Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of all other classes or series of capital stock of the Corporation by reason of their ownership thereof, an amount per share equal to \$0.347 per share for each share of Series E Preferred Stock then held by them (as adjusted for any stock dividends, combinations or stock splits with respect to such Series E Preferred Stock), plus accrued but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series E Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series E Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Series D Preference.** In the event of a Liquidation Event, and subject to the payment in full of the liquidation preferences with respect to the Series E Preferred Stock as provided in Section 2(a), the holders of the Series D Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of all other classes or series of capital stock of the Corporation by reason of their ownership thereof, an amount per share equal to \$0.5654 per share for each share of Series D Preferred Stock then held by them (as adjusted for any stock dividends, combinations or stock splits with respect to such Series D Preferred Stock), plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series D Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series D Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) **Series B and C Preference.** In the event of a Liquidation Event, and subject to the payment in full of the liquidation preferences with respect to the Series E and D Preferred Stock as provided in Sections 2(a) and 2(b), the holders of the Series B and Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of all other classes or series of capital stock of the Corporation by reason of their ownership thereof, an amount per share equal to (i) \$3.50 per share for each share of Series B Preferred Stock then held by them (as adjusted for any stock dividends, combinations or stock splits with respect to such Series B Preferred Stock) and (ii) \$2.60 per share for each share of Series C Preferred Stock then held by them (as adjusted for any stock dividends, combinations or stock splits with respect to such Series C Preferred Stock), plus accrued but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B and C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B and C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(d) **Remaining Assets.** Upon the completion of the distributions required by Sections 2(a), 2(b) and 2(c) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Preferred Stock (excluding the Series E Preferred Stock) and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Preferred Stock).

(e) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, the following will also be deemed a Liquidation Event: (i) any merger, reorganization or consolidation of the Company in which the stockholders of the Company prior to such event do not retain a majority of the voting power in the surviving corporation, or (ii) a sale or exclusive license of all or substantially all of the Company's assets or intellectual property

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(e)(i) above, if the consideration received by the Corporation

is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange or The Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30-day period ending three days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

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

(iii) **Distributions of Non-cash Consideration.** In the event of a deemed liquidation as described in Section 2(e)(i) that will involve the distribution of non-cash assets, to the extent commercially practicable, the distribution of each non-cash asset shall be made pro rata to each shareholder in proportion to the aggregate amount of consideration to which such shareholder is entitled in such deemed liquidation. If in such a deemed liquidation the non-cash assets to be distributed are not divisible in a commercially practicable manner so as to effect the pro rata distribution contemplated by this Section 2(e)(iii), then the Corporation shall use commercially reasonable efforts to liquidate such assets for cash.

(iv) **Notice of Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than 15 days prior to the stockholders' meeting called to approve such transaction, or 15 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 15 days after the Corporation has given the first notice provided for herein or sooner than 15 days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such

notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of the Preferred Stock.

(v) **Effect of Noncompliance.** In the event the requirements of this Section 2(e) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(e)(iv) hereof.

3. **Redemption.** The Series E Preferred Stock, the Series D Preferred Stock, and the Series C Preferred Stock (collectively, the "**Redeemable Preferred Stock**") shall be redeemable as follows:

(a) **Series E Redemption.** Upon the receipt by the Corporation at any time of a written request (the "**Series E Redemption Election**") from the holders of not less than a majority of the then outstanding Series E Preferred Stock that the shares of Series E Preferred Stock be redeemed, the Corporation shall redeem, from any source of funds legally available therefore, all outstanding shares of Series E Preferred Stock subject to the Series E Redemption Election within 5 business days following the date in which the Corporation receives the Series E Redemption Election (the "**Series E Redemption Date**"). Each redemption according to this Section 3(a) shall be accomplished by paying in cash therefor a sum per share equal to the **Redemption Price** specified for the Series E Preferred Stock in Section 3(b) below.

(b) **Redemption Date and Price.** In addition, upon receipt by the Corporation at any time after the fifth anniversary date of the date upon which any shares of Series D Preferred Stock were first issued of a written request (each, along with any Series E Redemption Election, a "**Redemption Election**") from the holders of not less than a majority of the then outstanding Redeemable Preferred Stock that the shares of Redeemable Preferred Stock be redeemed, the Corporation shall redeem, from any source of funds legally available therefore, all outstanding shares of Redeemable Preferred Stock in three yearly installments of 33.33% of the shares of Redeemable Preferred Stock beginning on a date that is within 70 days following the date on which the Corporation receives the Redemption Election, and continuing on thereafter on each of the two following anniversaries of the date on which the Corporation receives the Redemption Notice (each, along with any Series E Redemption Date, a "**Redemption Date**"). Upon the third Redemption Date pursuant to this Section 3(b), all of the Redeemable Preferred Stock shall have been redeemed by the Corporation. Each redemption shall be accomplished in accordance with the procedures set forth in this Section 3 by paying in cash therefor a sum per share equal to (i) \$2.60 per share of Series C Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all accrued but unpaid dividends on such shares, (ii) \$0.5654 per share of Series D Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all accrued but unpaid dividends on such shares and (iii) \$0.347 per share of Series E Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all accrued but unpaid dividends on such shares (the "**Redemption Price**"). Any redemption effected pursuant to this Section 3(b) shall be made available (i) first, prior and in preference to any redemption of the Series D Preferred Stock and Series C Preferred Stock, on a pro rata basis

among the holders of the Series E Preferred Stock based upon the total Redemption Price applicable to each holder's shares of Series E Preferred Stock; (ii) second, subject to the prior redemption right of the Series E Preferred Stock as provided herein, on a pro rata basis among the holders of the Series D Preferred Stock based upon the total Redemption Price applicable to each holder's shares of Series D Preferred Stock; and (iii) third, subject to the prior redemption right of the Series E and D Preferred Stock as provided herein, on a pro rata basis among the holders of the Series C Preferred Stock based upon the total Redemption Price applicable to each holder's shares of Series C Preferred Stock.

(c) **Procedure.** Within 15 days following its receipt of the Redemption Election, the Corporation shall mail a written notice, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Redeemable Preferred Stock at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares eligible to be redeemed from such holder, the Redemption Dates, the applicable Redemption Price, the place at which payments may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "**Redemption Notice**"). The holder of any shares of Redeemable Preferred Stock may exercise such holders' applicable redemption rights as to such shares or any part thereof, subject to the limitations set forth in Section 3(d) hereof, by delivering to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Preferred Stock or at such other place as may be designated by the Corporation in the Redemption Notice, at any time within 30 days following the date of receipt of such Redemption Notice by the holder, a written notice (each a "**Holder's Notice**") stating that such holder elects to have redeemed all or part of the shares of Redeemable Preferred Stock held by the holder which are eligible for redemption in accordance with the Redemption Notice. On or after the Redemption Date, each holder of Redeemable Preferred Stock that has elected to have shares of Redeemable Preferred Stock redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. As promptly as practicable after receipt of the surrendered certificate or certificates (and in no event more than 10 days following the surrender of such certificate or certificates) the Corporation shall issue and deliver to or upon the written order of such holder, at such office or other place designated by the holder, a check for cash with respect to the shares so redeemed. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(d) **Effect of Redemption: Insufficient Funds.** From and after any Redemption Date, unless there shall have been a default or delay in payment of the Redemption Price, all rights of the holders of shares of Redeemable Preferred Stock designated for redemption in a Holder's Notice (except the right to receive the Redemption Price without interest upon surrender of their share certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Redeemable Preferred Stock on any Redemption Date are

insufficient to redeem the total number of shares of Redeemable Preferred Stock to be redeemed on such date, those funds which are legally available will be used (i) first to redeem the maximum possible number of shares of Series E Preferred Stock ratably among the holders of such shares to be redeemed based upon the total Redemption Price applicable to the shares of Series E Preferred Stock for which each holder has requested redemption on such date pursuant to a Holder's Notice; second, upon full redemption of the Series E Preferred Stock to be redeemed as provided in clause (i) above, to redeem the maximum possible number of shares of Series D Preferred Stock ratably among the holders of such shares to be redeemed based upon the total Redemption Price applicable to the shares of Series D Preferred Stock for which each holder has requested redemption on such date pursuant to a Holder's Notice; and (iii) third, upon full redemption of the shares of Series E and D Preferred Stock to be redeemed as provided in clauses (i) and (ii) above, to redeem the maximum possible number of shares of Series C Preferred Stock ratably among the holders of such shares to be redeemed based upon the total Redemption Price applicable to the shares of Series C Preferred Stock for which each holder has requested redemption on such date pursuant to a Holder's Notice. Any shares of Redeemable Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided in these Articles of Incorporation. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Redeemable Preferred Stock, such funds will immediately be used to redeem (i) first, the balance of the shares of Series E Preferred Stock that the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed; (ii) second, upon the redemption of such shares of Series E Preferred Stock, the balance of the shares of Series D Preferred Stock that the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed; and (iii) third, upon the redemption of such shares of Series E and D Preferred Stock, the balance of the shares of Series C Preferred Stock that the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed.

(e) **Redemption Fund.** On or prior to each Redemption Date, the Corporation shall deposit the Redemption Price of all shares of Redeemable Preferred Stock designated for redemption in all Holder's Notices received by the Corporation with respect to such Redemption Date, and not yet redeemed or converted, with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to publish the notice of redemption thereof and pay the applicable Redemption Price for such shares to their respective holders on or after the Redemption Date, upon receipt of notification from the Corporation that such holder has surrendered such holder's share certificate to the Corporation pursuant to Section 3(d) above. As of the date of such deposit (even if prior to the Redemption Date), the deposit shall constitute full payment of the shares to their holders, and from and after the date of the deposit the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the rights to receive from the bank or trust corporation payment of the applicable Redemption Price of the shares, without interest, upon surrender of their certificates therefor, and the right to convert such shares as provided in Section 4 hereof. Such instructions shall also provide that any monies deposited by the Corporation pursuant to this Section 3(e) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4 hereof prior to the Redemption

Date shall be returned to the Corporation forthwith upon such conversion. The balance of any monies deposited by the Corporation pursuant to this Section 3(e) remaining unclaimed at the expiration of two years following the Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

4. **Conversion.** The holders of Series B, Series C and Series D Preferred Stock (the "**Convertible Preferred Stock**") shall have conversion rights as follows (the "**Conversion Rights**"):

(a) **Right to Convert.** Subject to Sections 4(b) and 4(c), each share of Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such shares and, with respect to shares of Redeemable Preferred Stock, on or prior to the fifth day prior to the Redemption Date of any shares of Redeemable Preferred Stock, if any, as may have been fixed in any Redemption Notice with respect to the Redeemable Preferred Stock, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$3.50 in the case of the Series B Preferred Stock plus any declared but unpaid dividends thereon, (ii) \$2.60 in the case of the Series C Preferred Stock plus any declared but unpaid dividends thereon, and (iii) \$0.5654 in the case of the Series D Preferred Stock plus any declared but unpaid dividends thereon, by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. As of the date of this Third Amended and Restated Articles of Incorporation, the Conversion Price per share shall be \$1.51 for shares of Series B Preferred Stock, \$2.01 for shares of Series C Preferred Stock, and \$0.5654 for shares of Series D Preferred Stock. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d) below.

(b) **Automatic Conversion.** Each share of Convertible Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"), the public offering price of which is not less than \$6.50 per share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) and which results in aggregate cash proceeds to the Corporation of \$25,000,000 (net of underwriting discounts and commissions) (a "**Qualified Public Offering**"), (ii) as to the Series B Preferred Stock, on the date specified by written consent or agreement of the holders of two-thirds of the then outstanding shares of Series B Preferred Stock, voting separately as a class, (iii) as to the Series C Preferred Stock, on the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series C Preferred Stock, voting separately as a class, or (iv) as to the Series D Preferred Stock, on the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series D Preferred Stock, voting separately as a class.

(c) **Mechanics of Conversion.** Before any holder of Convertible Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Convertible Preferred Stock, and shall give written

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

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

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation shall issue after the date upon which these Third Amended and Restated Articles of Incorporation are filed with and accepted by the Secretary of State of the State of Nevada (the "Articles Filing Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the applicable Conversion Price for any series of Convertible Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section (4)(d)(i), the new Conversion Price for the Series D Preferred Stock shall equal the price paid per share for such Additional Stock (as determined pursuant to Section 4(d)(i)(D)) and the new Conversion Price for the Series B Preferred Stock and the Series C Preferred Stock shall be determined by multiplying the Conversion Price then in effect for such series of Preferred Stock by a fraction, (x) the numerator of which shall be the number of shares of Outstanding Common (as defined below) plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall mean the number of shares of Common Stock that is the sum of (x) the number of shares of Common Stock outstanding immediately prior to the issuance of Additional Stock, (y) the number of shares of Common Stock into which the then outstanding Preferred Stock could be converted if fully converted on the day immediately preceding the date of the issuance of Additional Stock and (z) the number of shares of Common Stock that could be obtained through the exercise or

conversion of all other rights, options, warrants and convertible securities outstanding on the day immediately preceding the date of the issuance of Additional Stock or other rights to purchase shares of Common Stock or the conversion into Common Stock of any convertible securities, provided that such term shall not include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) **Definition of "Additional Stock"**. For purposes of this Section 4(d)(i), "**Additional Stock**" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Articles Filing Date) other than

- (1) Common Stock issued pursuant to a transaction described in Sections 4(d)(ii) and (iii) hereof,
- (2) Shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued or to be issued to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary, pursuant to stock purchase or stock option plans or other arrangements that have been approved by the Board of Directors or the Compensation Committee of the Board of Directors as of Articles Filing Date or thereafter may be approved by the Compensation Committee of the Board of Directors;
- (3) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions not to exceed more than one percent of the Corporation's outstanding capital stock in any 12-month period that are approved by the Board of Directors,
- (4) Shares of Common Stock or Preferred Stock issued or issuable upon exercise of (i) warrants or other rights to acquire the Corporation's Common Stock or Preferred Stock outstanding as of the Articles Filing Date or (ii) warrants or other rights to acquire shares of Series E Preferred Stock or Series D Preferred Stock issued pursuant to the Convertible Promissory Note and Warrant Purchase Agreement dated October 31, 2002 among the Corporation and the investors identified therein,
- (5) Capital stock issued in exchange for capital stock or warrants or options to purchase capital stock issued in connection with a bona fide merger, consolidation, acquisition or similar business combination, the terms of which are approved by the Board of Directors; provided, however, this clause (5) shall not apply to warrants or options granted to persons who are employees, officers or directors of, or consultants to or advisors to the Company or any subsidiary immediately prior to such merger consolidation, acquisition, or similar business combination,
- (6) Shares of Common Stock issued or issuable upon conversion of the Preferred Stock,
- (7) Shares of Common Stock issued or issuable in a Qualified Public Offering, and

(8) Any issuances of Common Stock, warrants or other rights approved by the holders of not less than a majority of the then outstanding shares of Preferred Stock.

(C) **No Fractional Adjustments.** No adjustment of the Conversion Price for the Convertible Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment; provided, however, that if, at the time of such determination, the Corporation's Common Stock is traded in the over-the-counter market or on a national or regional securities exchange, such fair market value as determined by the Board of Directors shall not exceed the aggregate Current Market Price (as defined below) of the shares of Common Stock being issued. For the purpose of any computation pursuant to this Section 4(d)(i)(D)), the "Current Market Price" at any date of one share of Common Stock, shall be deemed to be the average of the highest reported bid and the lowest reported offer prices on the preceding business day as furnished by the National Quotation Bureau, Incorporated (or equivalent recognized source of quotations); provided, however, that if the Common Stock is not traded in such manner that the quotations referred to in this paragraph (D) are available for the period required hereunder, Current Market Price shall be determined in good faith by the Board of Directors; but if challenged by the holders of more than 50% of the outstanding Preferred Stock, then as determined by an independent appraiser selected by the Board of Directors, with the cost of such appraisal to be borne by the challenging parties.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the Articles Filing Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (to the extent then exercisable) 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 Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such

options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (to the extent then convertible or exchangeable) for any such convertible 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, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each series of Convertible Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each series of Convertible Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section (4)(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price for each series of Convertible Preferred Stock above the applicable Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time or from time to time after the Articles Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Convertible Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time as provided in Section 4(d)(iii) below.

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the Articles Filing Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each series of Convertible Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** Subject to Section 1(c) above, in the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Convertible Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of Convertible Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** The Corporation will not, by amendment of its Articles of Incorporation (except in accordance with Section 6 hereof and applicable law) or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

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

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of any series of Convertible Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Convertible Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

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

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Convertible 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 Convertible Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Convertible Preferred Stock,

in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Articles of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. Voting Rights.

(a) Except as provided in Section 5(b), the holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which the Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together (on an as-converted basis) with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) The holders of shares of Series C Preferred Stock, voting separately as a class, shall be entitled to elect two members of the Board of Directors of the Corporation. The Holders of outstanding Common Stock, voting separately as a class (excluding the holders of any shares of Preferred Stock), shall be entitled to elect two members of the Board of Directors of the Corporation. The Holders of Common Stock and Preferred Stock of the Corporation (voting together as a single class, and on an as-converted basis) shall be entitled to elect any remaining members of the Board of Directors of the Corporation.

6. Protective Provisions.

(a) So long as 10% of the shares of Preferred Stock issued and outstanding as of the Articles Filing Date remain issued and outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a class:

(i) effect a transaction described in Section 2(e)(i) above;

(ii) amend the Corporation's Articles of Incorporation or Bylaws, including without limitation, to change the size of the Board of Directors of the Corporation, or alter or change the rights, preferences or privileges of the Preferred Stock so as to affect the rights, preferences or privileges of the shares of any series of the Preferred Stock;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of any series of Preferred Stock;

(iv) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, any series of Preferred Stock with respect to voting, dividends, redemption, conversion, anti-dilution protection, registration rights or upon liquidation;

(v) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; ~~provided, however,~~ that this restriction shall not apply to (i) the redemption any Preferred Stock pursuant to Section 3 hereof or (ii) the repurchase of shares of Common Stock in an amount not to exceed \$25,000 in the aggregate in any 12-month period from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(vi) enter into any reclassification, reorganization or recapitalization of the Corporation's outstanding capital stock or transfer any assets of the Corporation to a subsidiary;

(vii) acquire any other business entity;

(viii) make any material change in the Corporation's business as presently conducted or as currently proposed to be conducted; or

(ix) enter into any transaction in excess of \$100,000 with any officer or director of the Corporation, or any related party thereto, or with any other affiliates of the Corporation.

7. Status of Redeemed or Converted Stock. In the event any shares of Preferred Stock shall be redeemed pursuant to Section 3 or converted pursuant to Section 4 hereof, the shares so redeemed or converted shall be cancelled and shall not thereafter be issuable by the Corporation. The Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. **Redemption.** The Common Stock and the Series B Preferred Stock are not redeemable.

4. **Voting Rights.** Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

(A) To the fullest extent permitted by the Nevada Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

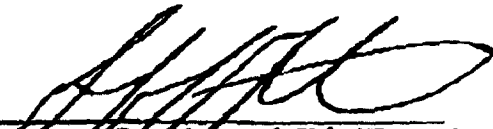
(C) Neither any amendment nor repeal of this Article V, nor the adoption of any provision of the Corporation's Articles of Incorporation inconsistent with this Article V, shall eliminate or reduce the effect of this Article V in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article V, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

[Signature Page Follows]

The foregoing Second Amended and Restated Articles of Incorporation have been duly adopted by the Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Section 78.390 of the Nevada Corporation Law.

The Undersigned hereby certify that Jeff Lindauer is the President and Chief Executive Officer of the Corporation and that Jamon Jarvis is the Secretary of the Corporation and that they have been authorized to execute the foregoing Third Amended and Restated Articles of Incorporation by the Board of Directors.

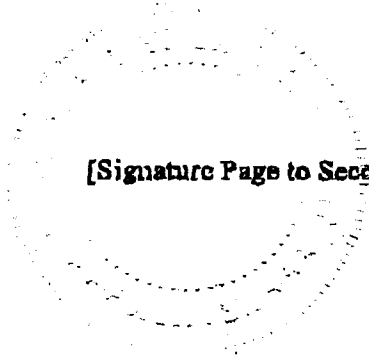
Executed at Salt Lake City, Utah, on October 30, 2002.



Jeff Lindauer, President and Chief Executive Officer



Jamon Jarvis, Secretary



[Signature Page to Second Amended and Restated Articles of Incorporation]

STATE OF NEVADA
Secretary of State
I hereby certify that this is a true and
complete copy of the document as filed
in this office

OCT 3 0 2002

By 
Dean Heller