

5/21/01

05-30-2001

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
Tab settings ⇌ ⇌ ⇌ ▼



101736827 ▼

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

InterHealth Nutritionals Incorporated

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State CA
- Other _____

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other _____

Execution Date: 3/23/98

2. Name and address of receiving party(ies)

Name: InterHealth Nutraceuticals Incorporated

Internal

Address: 5451 Industry Way

Street Address: _____

City: Benicia State: CA Zip: 94510

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State CA
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

74/497,000

B. Trademark Registration No.(s)

1,627,865

Additional number(s) attached Yes No

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

Name: Tawnya R. Wojciechowski

Internal Address: Sheppard Mullin Richter & Hampton

Street Address: 650 Town Center Drive, 4th Floor

City: Costa Mesa State: CA Zip: 92626

6. Total number of applications and registrations involved: _____

2

7. Total fee (37 CFR 3.41).....\$ 65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

500209

05-21-2001

U.S. Patent & TMO/TM Mail Rpt Dt. #73

(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.

Tawnya R. Wojciechowski

Name of Person Signing

Signature

5/21/01

Date

Total number of pages including cover sheet, attachments, and document: 26

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

TRADEMARK
REEL: 002305 FRAME: 0653

State of California



SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

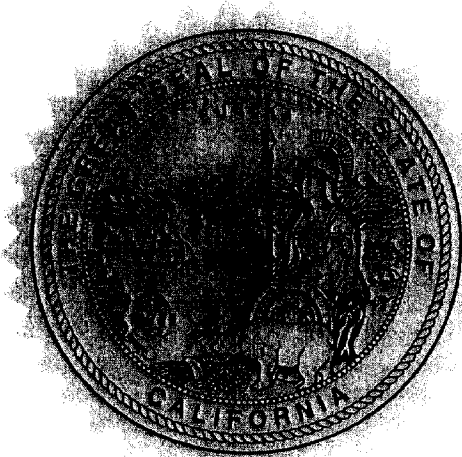
That the attached transcript of 24 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JAN 04 2000

Bill Jones

Secretary of State



1199303

ARTICLES OF INCORPORATION

OF

WILLIAM SEROY & ASSOCIATES

FILED
In the office of the Secretary of State
of the State of California

OCT 07 1987

March Fong Eu
MARCH FONG EU, Secretary of State

I

The name of this corporation is William Seroy & Associates.

II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process is William A. Seroy, 3240 Elvin Street, Lafayette, California 94549.

IV

This corporation is authorized to issue only one class of shares of stock, and the total number of shares that this corporation is authorized to issue is 100,000.

Dated: October 6, 1987.

Carol A. Perry

Carol A. Perry

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

Carol A. Perry

Carol A. Perry

capo5:WSA

TRADEMARK
REEL: 002305 FRAME: 0655

NCCTO:

A340241

1149363

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION

FILED
In the office of the Secretary of State
of the State of California

OCT 22 1987

March Fong Lu
MARCH FONG LU, Secretary of State

William A. Seroy certifies that:

1. He is the president and the secretary of William Seroy & Associates, a California corporation.

2. Article I of the articles of incorporation of this corporation is amended to read as follows:

"The name of this corporation is The William Seroy Group."

3. The foregoing amendment of articles of incorporation has been duly approved by the board of directors.

4. The foregoing amendment of articles of incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 7,500. The number of shares voting in favor of the amendment is 7,500.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Date: October 15, 1987

William A. Seroy

William A. Seroy
President and Secretary

capo5:WSAA
72561.100

1199303

A476167

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
THE WILLIAM SEROY GROUP

FILED *Bjm*
In the office of the Secretary of State
of the State of California

MAY 16 1998

Bill Jones
BILL JONES, Secretary of State

William A. Seroy certifies that:

1. He is the president and the secretary of The William Seroy Group, a California corporation.
2. The articles of incorporation of the corporation are amended and restated to read as follows:

I

The name of the corporation is The William Seroy Group.

II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The corporation is authorized to issue six classes of shares to be designated, respectively, Class B Shares, Class A Shares, Class C Shares, Class 1 Shares and Class 2 Shares and Common Stock. The total number of shares of capital stock that the corporation shall have authority to issue is 64,000. The total number of shares of Class B Shares the corporation shall have the authority to issue is 7,736; the total number of shares of Class A Shares the corporation shall have the authority to issue is 7,864; the total number of Class C Shares the corporation shall have the authority to issue is 1,600; ; the total number of shares of Class 1 Shares the corporation shall have the authority to issue is 15,664 and the total number of shares of Class 2 Shares the corporation shall have the authority to issue is 7,736; the total number of shares of Common Stock the corporation shall have the authority to issue is 23,400. Upon filing of these Articles, each outstanding share of capital stock shall become one share of Class B Shares.

The powers, preferences, rights, restrictions, and other matters relating to the Class A, B and C Shares, to the Class 1 and 2 Shares and to the Common Stock are as follows:

1. Dividends

(a) No dividends (other than those payable solely in stock of the Company) shall be paid or declared or set apart for the shares of any class of stock of the corporation during any fiscal year of the corporation until a cash dividend in the total amount of \$1,027,144.50 with respect to shares of Class B Shares or Class 2 Shares shall have been paid on the shares of the Class B Shares or Class 2 Shares (the "Preference Dividend"). The Preference Dividend shall be divided equally among the Class B Shares outstanding at the time of the declaration of the Preference Dividend; provided, however, if any portion of the Preference Dividend remains unpaid at the time of conversion of the Class B Shares into Class 2 Shares, then the balance of the unpaid Preference Dividend shall be divided equally among the Class 2 Shares issued upon conversion of those Class B Shares outstanding at the time of declaration of the Preference Dividend.

(b) Other than with respect to the Preference Dividend, no dividend shall be paid on or declared and set apart for the shares of any class of capital stock of the corporation for any dividend period unless at the same time an identical dividend per share for the same dividend period shall be paid on or declared and set aside for the shares of all other classes of capital stock.

(c) Except as otherwise provided with respect to shares of Class B Shares or Class 2 Shares, no right shall accrue to holders of shares of capital stock of the corporation by reason of the fact that dividends on such shares are not declared in any prior year, nor shall any undeclared or unpaid dividend bear or accrue any interest; provided however, if by December 31, 2001 any portion of the Preference Dividend has not been paid, such unpaid portion shall accrue interest from December 31, 2001 at the rate of 10% per annum until paid; and provided further, if any portion of the Preference Dividend has not been paid, it shall be paid upon the closing of the first sale of the corporation's Common Stock in a firm commitment or best efforts underwritten public offering registered under the Securities Act of 1933.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary, the holders of the Class B Shares or Class 2 Shares shall be entitled to receive in cash, prior to and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of the shares of capital stock of the corporation by reason of their ownership thereof, the amount of the unpaid Preference Dividend on each share of Class B Shares or Class 2 Shares then held by them. The Preference Dividend shall be divided equally among the Class B Shares outstanding at the time of the declaration of the Preference Dividend or, if no Class B Shares are then outstanding, equally among the Class 2 Shares issued upon conversion of the Class B Shares outstanding at the time of the declaration of the Preference Dividend.

(b) In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, after payment in full of the liquidation preference with respect to Class B Shares or Class 2 Shares as provided in paragraph (a) of this Section III, 2, the entire remaining assets and funds of the corporation legally available for distribution, if any, shall be distributed among the holders of the Class B Shares, the Class A Shares, Class C Shares, the Class 1 Shares, the Class 2 Shares and the Common Stock in proportion to number of shares owned by each holder to the total number of Class B Shares, Class A Shares, Class C Shares, Class 1 Shares, Class 2 Shares and Common Stock then outstanding.

(c) For purposes of this Section III, 2 (i) any acquisition of the corporation by means of merger or other form of corporate reorganization in which outstanding shares of the corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary (other than a mere reincorporation transaction) or (ii) sale of all or substantially all of the assets of the corporation, shall be treated as a liquidation, dissolution or winding up of the corporation and shall entitle the holders of the capital stock of the corporation to receive at the closing in cash, securities or other property (valued as provided in the immediately following paragraph below) amounts as specified in this Section III, 2.

(d) Whenever the distribution provided for in this Section III, 2 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of

such securities or other property as determined in good faith by the Board of Directors.

3. Reclassification and Reorganization.

No class of capital stock of the corporation shall be changed into the same or a different number of shares of any other class or classes of stock, and no class of capital stock of the corporation shall be increased or decreased (by stock split, reclassification, combination, consolidation, stock dividend or other reorganization or recapitalization transaction) unless all classes of shares of capital stock are treated in an equivalent manner.

4. Voting Rights.

The holders of the Class B Shares, voting together as a class, shall have a number of votes equal to 49% of the number of shares of Class B Shares plus Class A Shares outstanding. The holders of the Class A Shares, voting together as a class, shall have a number of votes equal to 51% of the number of shares of Class B Shares plus Class A Shares outstanding. The holders of the Class C Shares shall have no voting rights. The holders of the Class 1 Shares and the Class 2 Shares shall have one vote for each share outstanding. The holders of the Common Stock shall have one vote for each share outstanding. The number of votes allocated to the holders of the Class B Shares and the number of votes allocated to the holders of the Class A Shares shall be allocated equally among the outstanding shares of each class, from time to time. Notwithstanding the forgoing, if Class B Shares are the only class of outstanding shares, each Class B Share shall have one vote for each share outstanding.

5. Conversion.

(a) Each share of Class B Shares, Class A Shares and Class C Shares shall automatically be converted into shares of Common Stock on a one-to-one basis upon the closing of the first sale of the corporation's Common Stock in a firm commitment or best efforts underwritten public offering registered under the Securities Act of 1933. If the shares of Class B Shares, Class A Shares and Class C Shares have not been converted pursuant to the immediately preceding sentence by April 15, 1999, then on April 15, 1999, the Class B Shares shall automatically be converted into Class 2 Shares and the Class A and Class C Shares shall be converted into Class 1 Shares on a one-to-one basis. Each share of Class 1 Shares and Class 2 Shares shall automatically be

converted into shares of Common Stock on a one-to one basis upon the closing of the first sale of the corporation's Common Stock in a firm commitment or best efforts underwritten public offering registered under the Securities Act of 1933.

(b) Before any holder of shares of capital stock shall be entitled to a certificate for shares of capital stock into which such shares have been converted, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for such stock. The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of converted shares, a certificate or certificates for the number of shares of stock to which the holder shall be entitled. Such conversion shall be deemed to have been made (i) immediately prior to the closing of the sale of securities in the public offering referenced in this Section III, 5, or (ii) April 15, 1999, as applicable, and the person or persons entitled to receive the shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares on such date.

6. Pre-emptive Rights.

(a) In the event that the corporation intends to consummate an "Issuance" (as defined below) at any time prior to the closing of the first sale of the corporation's Common Stock in a firm commitment or best efforts underwritten public offering registered under the Securities Act of 1933, as amended:

(i) the corporation shall give the holders of Class A Shares or Class 1 Shares and the holders of Class B Shares or Class 2 Shares 2 business days' notice of the corporation's intent to offer an Issuance (as defined below) together with the terms and conditions of such Issuance, which notice shall identify the intended purchaser(s) or reasonably defined class of purchasers of the Issuance (the "Issuance Notice");

(ii) the corporation shall offer each of the holders of Class B Shares or Class 2 Shares (each, a "Holder") that portion of such Issuance which equals the proportion that the number of shares of capital stock held by each Holder bears to the total number of shares of capital stock of all classes outstanding prior to the Issuance or such lesser portion as each Holder may elect (a "Elected Portion"); and

(iii) if

(x) any Holder elects to purchase an Elected
Portion, or

(y) if no Holder so elects, if all of the
holders of Class B Shares or Class 2 Shares consent in writing,

each of the holders of Class A Shares or Class 1 Shares shall be
considered a Holder under the immediately preceding
paragraph (ii).

(b) If any Holder fails to:

(x) elect in writing to purchase the Holder's
Elected Portion within 2 business days after the Issuance Notice
or, if the Issuance is not closed within 4 business days after the
Issuance Notice, no later than 1 business day after written notice
from the corporation of the date that a purchaser or purchasers and
the corporation have entered into a binding agreement to purchase
the Issuance or;

(y) tender to the corporation the purchase
price of the Holder's Elected Portion of such Issuance at the
closing

then the corporation shall be entitled to issue close the Issuance
without the participation of that Holder.

(c) If any Holder timely elects in writing to purchase such
holder's Elected Portion and tenders to the corporation the
purchase price of the Holder's Elected Portion of such Issuance at
the closing, then the corporation shall issue to the Holder its
Elected Portion of such Issuance if, and only if, the purchaser or
purchasers remain willing to purchase the balance.

(d) An "Issuance" shall mean an issuance and sale of shares
or options for shares or any other right convertible or exercisable
into shares of capital stock of the corporation for consideration
consisting of cash and/or property, provided, however, that
Issuance shall not include the issuance and sale of shares or options
to an employee of the corporation as a part of their employment
compensation.

7. No Impairment.

The corporation will not, by amendment of its Articles of
Incorporation or Bylaws or through any reorganization, transfer of

assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any 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 of the provisions of this Article III and in taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the capital stock of the corporation against impairment.

8. 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, Class 1 Shares and Class 2 Shares, solely for the purpose of effecting the conversion of the shares of Class B Shares, Class A Shares, Class C Shares, Class 1 Shares and Class 2 Shares, such number of shares of Common Stock and Class 1 Shares and Class 2 Shares as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Class B Shares, Class A Shares and Class C Shares or Class 1 Shares and Class 2 Shares and if at any time, the number of authorized but unissued shares of Common Stock, Class 1 Shares and Class 2 Shares shall not be sufficient to effect the conversion of all then outstanding shares of the Class B Shares, Class A Shares and the Class C Shares or Class 1 Shares and Class 2 Shares, 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, Class 1 Shares and Class 2 Shares, as applicable to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation.

9. Fractional Shares.

No fractional shares shall be issued upon the conversion of any shares of shares of Class B Shares, Class A Shares or Class C Shares. All shares of Common Stock or Class 1 Shares and Class 2 Shares (including fractions of such shares) issuable upon conversion of more than one share of Class B Shares, Class A Shares and the Class C Shares by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of a fraction of a share. If after such aggregation, the conversion would result in the issuance of a fraction of a share, the corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the

date of conversion (as determined in good faith by the Board of Directors).

10. Notices.

Any notice required by the provisions of this Article III to be given to the holders of shares of capital stock of the corporation shall be in writing and shall be deemed given upon receipt if deposited in the United States mail, postage prepaid, or if sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at such holder's address or facsimile number appearing in the records of the corporation.

VI

The corporation shall not amend its Articles of Incorporation or Bylaws without the approval, by vote or written consent, by the holders of a majority of the shares of capital stock outstanding, plus a majority of the Class B Shares outstanding or the Class 2 Shares outstanding and a majority of the Class A Shares outstanding or the Class 1 Shares outstanding.

VII

No share or shares of Class B Shares, Class A Shares or Class 2 Shares acquired by the corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the corporation shall be authorized to issue.

VIII

The liability of the Directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

IX


The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code.

3. The foregoing amendment and restatement of articles of incorporation has been duly approved by the board of directors.

4. The foregoing amendment and restatement of articles of incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 6,876 shares of Common Stock. The number of shares voting in favor of the amendment equaled 100%.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Date: May 3, 1996



William A. Seroy
President and Secretary

NETO

1199303

A479352

FILED *IL*
In the office of the Secretary of State
of the State of California

JUL 30 1996

Bill Jones
BILL JONES, Secretary of State

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION
OF
THE WILLIAM SEROY GROUP

William A. Seroy certifies that:

1. He is the president and the secretary of The William Seroy Group, a California corporation.

2. Article I of the articles of incorporation of this corporation is amended to read as follows:

The name of the corporation is Interhealth
Nutritionals, Inc.

3. The foregoing amendment of the articles of incorporation has been duly approved by the board of directors.

4. The foregoing amendment of the articles of incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 14,740. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The number of shares voting in favor of the amendment equaled 100%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: July 16, 1996

William A. Seroy
William A. Seroy, President and Secretary

TRADEMARK

REEL: 002305 FRAME: 0666

15819

#1199303

A480102

CERTIFICATE OF AMENDMENT

OF

ARTICLES OF INCORPORATION

OF

INTERHEALTH NUTRITIONALS, INC.

FILED *JK*

In the office of the Secretary of State
of the State of California

AUG 14 1996

Bill Jones
BILL JONES, Secretary of State

William A. Seroy certifies that:

1. He is the president and the secretary of Interhealth Nutritionals, Inc., a California corporation.
2. Article I of the articles of incorporation of this corporation is amended to read as follows:

The name of the corporation is Interhealth
Nutritionals Incorporated.

3. The foregoing amendment and restatement of articles of incorporation has been duly approved by the board of directors.
4. The foregoing amendment of the articles of incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 14,740. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The number of shares voting in favor of the amendment equaled 100%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: August 12, 1996

William A. Seroy
William A. Seroy, President and Secretary

TRADEMARK

REEL: 002305 FRAME: 0667

1199303

A489892

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
INTERHEALTH NUTRITIONALS INCORPORATED

FILED *NYM*
In the office of the Secretary of State
of the State of California

MAR 31 1997

Bill Jones
BILL JONES, Secretary of State

The undersigned certifies that:

1. He is the president and secretary of Interhealth Nutritionals Incorporated, a California corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

I.

The name of the corporation is Interhealth Nutritionals Incorporated.

II.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The corporation is authorized to issue one class of stock to be designated Common Stock. The total number of shares of stock that the corporation shall have authority to issue is 5,500,000. Upon filing of these Amended and Restated Articles of Incorporation, each outstanding share of any class of capital stock shall become 271 shares of Common Stock.

IV.

No dividend shall be paid or declared or set apart, and no distribution shall be made, respecting any shares of Common Stock, or any capital stock of any subsidiary of the corporation, unless it is first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article IV shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

V.

(a) Except for the repurchase of the corporation's shares issued upon exercise of options where the repurchase is pursuant to the terms of the option, no shares of Common Stock or other security of the corporation, or of any subsidiary of the corporation, shall be repurchased, redeemed or acquired, and no sinking fund shall be established or paid into for the purpose of repurchasing, redeeming or acquiring such shares or other securities, unless the transaction is first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article V shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

VI.

(a) In the event that the corporation intends to consummate an "Issuance" (as defined below) at any time prior to the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended;

(i) the corporation shall give each shareholder of the corporation (the "**Holder**") five (5) business days' notice of the corporation's intent to offer an Issuance (as defined below) together with the terms of such Issuance, which notice shall identify the intended purchaser(s) of the Issuance, or, if such purchasers cannot be identified, then the notice shall identify a reasonably defined class of purchasers (the "**Issuance Notice**");

(ii) the corporation shall offer each Holder (the "**Preemptive Rights**") that portion of the Issuance which equals the proportion that the number of shares of Common Stock held by each Holder bears to the total number of shares of all Common Stock outstanding immediately prior to the Issuance or such lesser portion as each Holder may elect (the "**Elected Portion**").

(b) If any Holder fails to:

(i) elect in writing to purchase the Holder's Elected Portion within five (5) business days after the Issuance Notice or, if the Issuance is not closed within seven (7) business days after the Issuance Notice, no later than one (1) business day after written notice from the corporation of the date that a purchaser or purchasers and the corporation have entered into a binding agreement to purchase the Issuance; or

(ii) tender to the corporation the purchase price of the Holder's Elected Portion of such Issuance at the closing,

then the corporation shall be entitled to close the Issuance without the participation of that Holder.

(c) If any Holder timely elects in writing to purchase such Holder's Elected Portion and tenders to the corporation the purchase price of the Holder's Elected Portion of such Issuance at the closing, then the corporation shall issue to the Holder its Elected Portion of such Issuance if, and only if, the purchaser or purchasers remain willing to purchase the balance.

(d) An "Issuance" shall mean an issuance and sale of shares or options for shares or any other right convertible or exercisable into shares of capital stock of the corporation for consideration consisting of cash or property; provided, however, that Issuance shall not include the issuance and sale of shares or options to an employee of the corporation as a part of his or her employment compensation.

(e) All Holders' rights under this Article VI may be eliminated with respect to any Issuance by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock.

Notwithstanding the foregoing, the provisions of this Article VI shall terminate upon the closing of, and shall not be effective with respect to, a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

VII.

No securities (and no rights convertible or exercisable into securities) of the corporation or a subsidiary of the corporation may be issued, or agreed to be issued, unless the rights, preferences and privileges of the securities (and the terms and conditions of all rights that are convertible or exercisable into securities), the number of the securities, and the consideration for those securities (and rights), are first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article VII shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

VIII.

Any notice required by the provisions of these Articles to be given to the holders of Common Stock shall be in writing and shall be deemed given when such notice is deposited in the United States mail, postage prepaid, or sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at such holder's address or facsimile number appearing in the records of the corporation.

IX.

No sale or transfer of all or a substantial portion of the assets of the corporation or the assets of any subsidiary of the corporation shall be made, and no consolidation, merger, split off or spin off, or other form of corporate reorganization in which shares of the corporation or any of its subsidiaries are exchanged for securities or other consideration shall be made, unless it is first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of

Common Stock; provided, however, that the provisions of this Article IX shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

X.

The corporation shall not amend its Articles of Incorporation or Bylaws without the approval, by affirmative vote or written consent, of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article X shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

XI.

No share or shares acquired by the corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the corporation shall be authorized to issue.

XII.

The liability of the Directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

XIII.

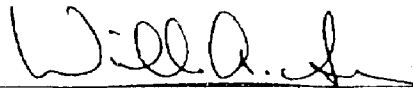
The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

3. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of the corporation is 14,740. The number of shares voting in favor of the amendment and restatement equaled 100% of the issued and outstanding shares.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

DATE: February 11, 1997



William A. Seroy, President and Secretary

A0507303

1199303

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF

INTERHEALTH NUTRITIONALS INCORPORATED

FILED *WELL*
In the office of the Secretary of State
of the State of California

APR 16 1998

Bill Jones
BILL JONES, Secretary of State

The undersigned certifies that:

1. He is the president and secretary of InterHealth Nutritionals Incorporated, a California corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

I.

The name of the corporation is InterHealth Nutraceuticals Incorporated.

II.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The corporation is authorized to issue one class of stock to be designated Common Stock. Upon filing of these Amended and Restated Articles of Incorporation, the total number of shares of stock that the corporation shall have authority to issue shall become 10,000,000.

IV.

No dividend shall be paid or declared or set apart, and no distribution shall be made, respecting any shares of Common Stock, or any capital stock of any subsidiary of the corporation, unless it is first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock, provided, however, that the provisions of this Article IV shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

V.

Except for the repurchase of the corporation's shares issued upon exercise of options where the repurchase is pursuant to the terms of the option, no shares of Common Stock or other security of the corporation, or of any subsidiary of the corporation, shall be repurchased redeemed or acquired, and no sinking fund shall be established or paid into for the purpose of repurchasing, redeeming or acquiring such shares or other securities, unless the transaction is first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article V shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

VI.

(a) In the event that the corporation intends to consummate an "Issuance" (as defined below) at any time prior to the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended;

(i) the corporation shall give each shareholder of the corporation (the "Holder") five (5) business days' notice of the corporation's intent to offer an Issuance (as defined below) together with the terms of such Issuance, which notice shall identify the intended purchaser(s) of the Issuance, or, if such purchasers cannot be identified, then the notice shall identify a reasonably defined class of purchasers (the "Issuance Notice");

(ii) the corporation shall offer each Holder (the "Preemptive Rights") that portion of the Issuance which equals the proportion that the number of shares of Common Stock held by each Holder bears to the total number of shares of all Common Stock outstanding immediately prior to the Issuance or such lesser portion as each Holder may elect (the "Elected Portion").

(b) If any Holder fails to:

(i) elect in writing to purchase the Holder's Elected Portion within five (5) business days after the Issuance Notice or, if the Issuance is not closed within seven (7) business days after the Issuance Notice, no later than one (1) business day after written notice from the corporation of the date that a purchaser or purchasers and the corporation have entered into a binding agreement to purchase the Issuance; or

(ii) tender to the corporation the purchase price of the Holder's Elected Portion of such Issuance at the closing,

then the corporation shall be entitled to close the Issuance without the participation of that Holder.

(c) If any Holder timely elects in writing to purchase such Holder's Elected Portion and tenders to the corporation the purchase price of the Holder's Elected Portion of such Issuance at the closing, then the corporation shall issue to the Holder its Elected Portion of such Issuance if, and only if, the purchaser or purchasers remain willing to purchase the balance.

(d) An "Issuance" shall mean an issuance and sale of shares or options for shares or any other right convertible or exercisable into shares of capital stock of the corporation for consideration consisting of cash or property, provided, however, that Issuance shall not include the issuance and sale of shares or options to an employee of the corporation as a part of his or her employment compensation.

(e) All Holders' rights under this Article VI may be eliminated with respect to any Issuance by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock.

Notwithstanding the foregoing, the provisions of this Article VI shall terminate upon the closing of, and shall not be effective with respect to, a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

VII.

No securities (and no rights convertible or exercisable into securities) of the corporation or a subsidiary of the corporation may be issued, or agreed to be issued, unless the rights, preferences and privileges of the securities (and the terms and conditions of all rights that are convertible or exercisable into securities), the number of the securities, and the consideration for those securities (and rights), are first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article VII shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

VIII.

Any notice required by the provisions of these Articles to be given to the holders of Common Stock shall be in writing and shall be deemed given when such notice is deposited in the United States mail, postage prepaid, or sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at such holder's address or facsimile number appearing in the records of the corporation.

IX.

No sale or transfer of all or a substantial portion of the assets of the corporation or the assets of any subsidiary of the corporation shall be made, and no consolidation, merger, split off or spin off, or other form of corporate reorganization in which shares of the corporation or any of its subsidiaries are exchanged for securities or other consideration shall be made, unless it is first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article IX shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

X.

The corporation shall not amend its Articles of Incorporation or Bylaws without the approval, by affirmative vote or written consent, of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article X shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

XI.

No share or shares acquired by the corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the corporation shall be authorized to issue.

XII.

The liability of the Directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

XIII.

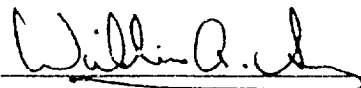
The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

3. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of the corporation is 4,548,466. The number of shares voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was greater than 65%.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

DATED: March 13, 1998.



William A. Seroy, President and Secretary

