

A0760087

FILED *Aug 1*
Secretary of State
State of California *llc*

AUG 29 2014

llc

2652490

CERTIFICATE OF AMENDMENT

OF EIGHTH AMENDED AND RESTATED ARTICLES

OF INCORPORATION OF AVANTIS MEDICAL SYSTEMS, INC.

The undersigned, Anthony DiTonno and Michael J. O'Donnell, hereby certify that:

1. They are the duly elected and acting President and Secretary, respectively, of Avantis Medical Systems, Inc., a California corporation.

2. Section 4(m) of Article III(B) of the Articles of Incorporation of said corporation is hereby amended and restated in its entirety to read as follows:

"(m) Special Mandatory Conversion. In connection with the extension of the convertible promissory note financing by the Corporation following April 17, 2014 in which the Corporation's Board of Directors allocates all or a portion of the notes to be purchased in such financing to the holders of the Series D Preferred Stock and Series D-1 Preferred Stock (the "Series D Holders", and such financing, the "Extension Note Financing") and one or more Series D Holders (each a "Series D Defaulting Investor"), fails to purchase its entire pro rata share (based upon the number of shares of Series D Preferred Stock and Series D-1 Preferred Stock held by such Series D Holder relative to the total number of shares outstanding of Series D Preferred Stock and Series D-1 Preferred Stock held by all Series D Holders) in cash on or before September 30, 2014 of the amount of the Extension Note Financing allocated to the Series D holders by the Board ("Series D Pro Rata Share"), then, such Series D Defaulting Investors' outstanding shares of Series D Preferred Stock and Series D-1 Preferred Stock shall automatically and without further action, whether or not certificates evidencing such shares of Preferred Stock are surrendered to the Company or its transfer agent at the time of such conversion, be converted into shares of Junior Preferred Stock at the Conversion Price applicable to such shares of Series D and/or Series D-1 Preferred Stock pursuant to this Section 4 and all of such Series D Defaulting Investors' warrants exercisable for Series D Preferred Stock shall automatically and without further action become exercisable for shares of Common Stock on October 1, 2014 (the "2014 Special Mandatory Conversion Date"). For purposes of determining whether or not a Series D Holder has purchased its entire Series D Pro Rata Share, any Series D Holder may, by written notice to the Corporation, aggregate all securities purchased by it and any affiliate of such Series D Holder in the Extension Note Financing and attribute such aggregated securities so purchased to itself, without duplication, for purposes of this Section 4(m). For purposes of clarity, this Section 4(m) shall apply only to the first Extension Note Financing following April 17, 2014.

The holder of any shares of Preferred Stock, or of securities exercisable for shares of Preferred Stock, converted pursuant to this Section 4(m) shall either (A) deliver to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for such Preferred Stock, or at such other place as may be designated by the Corporation, the certificate or certificates representing the shares or securities so converted, duly endorsed or assigned in blank or to the Corporation or (B) notify the Corporation or its transfer agent that

such certificates and, if applicable, securities have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates and securities. As promptly thereafter as is practicable, the Corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of Junior Preferred Stock or securities exercisable for shares of Common Stock to which such holder is entitled. The person in whose name the certificate for such shares of Junior Preferred Stock or securities exercisable for shares of Common Stock is to be issued pursuant to this Section 4(m) shall be deemed to have become a holder of such Junior Preferred Stock or securities exercisable for Common Stock, as the case may be, upon the 2014 Special Mandatory Conversion Date, and the shares of Preferred Stock to be converted pursuant to this Section 4(m) shall be deemed to have been cancelled and converted at such time without any requirement of further action on the part of the shareholder whose shares are so converted."

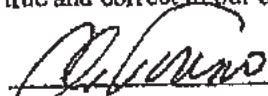
3. The foregoing amendment of Articles of Incorporation has been duly approved by the Board of Directors of said corporation.

4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of shareholders of said corporation in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares entitled to vote with respect to the foregoing amendment was 33,609,555 shares of Common Stock, no shares of Junior Preferred Stock, 991,085 shares of Series A Preferred Stock, 1,946,597 shares of Series A-1 Preferred Stock, 1,103,022 shares of Series B Preferred Stock, 497,254 shares of Series C Preferred Stock, 54,750,595 shares of Series D Preferred Stock and 76,057,737 shares of Series D-1 Preferred Stock. The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required. The percentage vote required was a majority of the outstanding Preferred Stock voting as a single class, a majority of the outstanding shares of Series D Preferred Stock voting as a single series, a majority of the outstanding shares of Series D-1 Preferred Stock voting as a single series, and a majority of the outstanding shares of Common Stock, Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Junior Preferred Stock voting together as a combined class.


A0760087

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

Date: 8/29, 2014



Anthony DiTunno
President



Michael J. O'Donnell
Secretary