



260418

ACCOUNT NO. : 072100000032

REFERENCE : 126553 4312909

AUTHORIZATION :

Patricia Piquet

COST LIMIT : \$ 43.75

ORDER DATE : February 8, 1999

ORDER TIME : 1:12 PM

ORDER NO. : 126553-005

CUSTOMER NO: 4312909

CUSTOMER: Charlotte Darling, Legal Asst
Gunster Yoakley Valdez-fauli &
777 S. Flagler Dr. #500

W. Palm Beach, FL 33401

*Amended &
Restated*

FILED
99 FEB -8 PM 1:44
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

DOMESTIC AMENDMENT FILING

NAME: AMERINET FINANCIAL SYSTEMS,
INC.

EFFECTIVE DATE:

700002768167--8

XX ARTICLES OF AMENDMENT
 RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
 PLAIN STAMPED COPY
 CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Robert Maxwell

EXAMINER'S INITIALS:

RR
402250, 00544, 006722 / 199

99 FEB -8 PM 2:03
DIVISION OF CORPORATIONS



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

February 8, 1999

CSC
1201 Hays Street
Tallahassee, FL 32301

SUBJECT: AMERINET FINANCIAL SYSTEMS, INC.
Ref. Number: 260418

RESUBMIT

Please give original
submission date as file date.

We have received your document for AMERINET FINANCIAL SYSTEMS, INC. and the authorization to debit your account in the amount of \$43.75. However, the document has not been filed and is being returned for the following:

The name and title of the person signing the document must be noted beneath or opposite the signature.

If you have any questions concerning the filing of your document, please call (850) 487-6907.

Annette Ramsey
Corporate Specialist

Letter Number: 499A00005537

DIVISION OF CORPORATIONS
99 FEB 11 PM 2:33

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
AMERINET FINANCIAL SYSTEMS, INC.**

FILED
99 FEB -8 PM 1:44
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to Section 607.1006 and 607.1007 of the Florida Statutes, AmeriNet Financial Systems, Inc., a Florida corporation (the "Corporation"), certified that:

1. The Amended and Restated Articles of Incorporation set forth herein were duly recommended by unanimous written consent dated January 12, 1999 of the Board of Directors.
2. The Amended and Restated Articles of Incorporation set forth herein were approved by the vote of shareholders holding a majority of the outstanding shares of common stock and by the vote of shareholders holding a majority of the outstanding shares of Series A Convertible Preferred Stock ("Series A Stock"), which are the only outstanding classes of stock of the Corporation, and the number of votes cast by each voting group were sufficient for approval on January 12, 1999.
3. The Articles of Incorporation in effect as of this date are amended as set forth herein in the following respects:
 - A. The principal place of business of the Corporation is updated.
 - B. The authorized shares are changed and a new Series B Convertible Preferred Stock is created.
 - C. Article IX concerning amendments of these Articles is amended in certain respects.
4. There are no discrepancies between the provisions of the Articles of Incorporation in effect prior hereto and the provisions of the amended and restated articles set forth herein, other than the inclusion of the foregoing amendments.
5. Upon the filing of these Amended and Restated Articles of Incorporation, each share of Series A Stock of this Corporation then outstanding shall automatically be converted into 4/10ths of one share of common stock of the Corporation, par value \$.001 per share.

Pursuant to Section 607.1007 of the Florida Statutes, the Articles of Incorporation, as amended, of AmeriNet Financial Systems, Inc., a Florida corporation, are hereby amended and restated as follows:

Article I

Name

The name of the corporation is AmeriNet Financial Systems, Inc.

Article II

Duration

This corporation shall have a perpetual existence.

Article III

Purpose

This corporation is organized for the purpose of transacting any and all lawful business.

Article IV

Address

The principal place of business of this corporation shall be:

6200 South Syracuse Avenue
Suite 400
Englewood, CO 80111

The mailing address of this corporation shall be:

6200 South Syracuse Avenue
Suite 400
Englewood, CO 80111

Article V

Capital Stock

A. Authorized Shares. This Corporation is authorized to issue two classes of shares, to be designated Common Stock and Preferred Stock, respectively. This Corporation is authorized to issue 50,000,000 shares of Common Stock with a par value of \$0.001 per share and 23,695,877 shares of Preferred Stock with a par value of \$0.001 per share. The Preferred Stock authorized by these Articles of Incorporation shall be issued from time to time in one or more series.

B. Authorized Shares - Preferred Stock. Except with respect to the Series B Convertible Preferred Stock, the Board of Directors is authorized, subject to limitations prescribed by law and the provisions of Article V, to provide for the issuance of the shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Florida, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each series and the qualifications, limitations or restrictions thereof. Within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series of Preferred Stock, the Board of Directors may increase or decrease (but neither above the total number of authorized shares of the class, nor below the number of shares of such series, then outstanding) the number of any such series subsequent to the issue of shares of that series.

The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

i) The number of shares constituting that series and the distinctive designation of that series;

ii) The dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

iii) Whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

iv) Whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;

v) Whether or not shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

vi) Whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;

vii) The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of this Corporation, and the relative rights or priority, if any, of payment of shares of that series; and

viii) Any other relative rights, preferences and limitations of that series.

C. **Authorized Shares - Series B Preferred Stock.** The initial series of Preferred Stock authorized under these Articles of Incorporation shall be comprised of an aggregate total of 23,695,877 shares, all to be designated "Series B Convertible Preferred Stock" ("Series B Stock"). The rights, preferences, privileges and restrictions of the Series B Stock and of the holders thereof shall be as follows:

1. **Dividends.**

a. **Series B Stock - Preferential Right to Dividends.** Each holder of outstanding shares of Series B Stock shall be entitled to receive, when and if declared by the Board of Directors and out of any funds legally available therefor, noncumulative cash dividends during each Fiscal Year (as defined) of the Corporation at the annual rate of \$0.097 per share (the "Series B Preferential Dividend"), in preference to any declaration or payment (payable other than in Common Stock) on the Junior Stock (as defined). Dividends shall be paid to the holders of record of the Series B Stock as their names shall appear on the share register of the Corporation on the record date for such dividend.

b. **Partial Payment.** If the Board of Directors shall declare a dividend on the outstanding shares of Series B Stock and the amount available for payment thereof is insufficient to permit the payment of the full Series B Preferential Dividend required to be paid to the holders of the outstanding shares of Series B Stock, then the amount available for such dividend payments shall be distributed ratably among the holders of the outstanding shares of Series B Stock.

c. **Dividends on Junior Stock.** After the holders of Series B Stock receive their noncumulative Series B Preferential Dividends during any applicable Fiscal Year, the holders of Series B Stock shall participate ratably with the Common Stock on any other dividends or distributions during such Fiscal Year, as if such holders had converted their Series B Stock shares into the number of shares of Common Stock into which outstanding shares of Series B Stock are convertible pursuant to this Article V, as of the record date of the dividend. The Corporation shall not declare, pay or set apart for payment any dividend or other distribution on any Junior Stock in any Fiscal Year unless the Series B Preferential Dividend for such Fiscal Year shall have been paid in full.

d. **Adjustments for Splits, etc.** All numbers relating to the amount of dividends payable on any of the Series B Stock as specified in this Paragraph C.1. shall be Appropriately Adjusted (as defined).

2. **Preference on Liquidation.**

a. **Preference Amount.** In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary (a "Liquidation Event") or any event which is deemed a Liquidation Event pursuant to Paragraph C.2.f. below, the holders of the outstanding shares of Series B Stock shall be entitled to be paid out of the assets of this Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment is made in respect of the outstanding shares of Junior Stock in an amount equal to \$0.97 per share (Appropriately Adjusted) plus ten percent (10%) of such \$0.97 (Appropriately Adjusted) compounded annually, for each year (or fraction thereof) from the Original Issue Date (as defined) of the Series B Stock plus any declared and accrued but unpaid dividends on each such share (the "Series B Liquidation Amount").

b. **Special Participation Rights of Series B Stock.** After payment in full of the Series B Liquidation Amount, any remaining assets of this Corporation up to an amount of cash or other assets having a fair market value equal to \$0.97 per share of Series B Stock (Appropriately Adjusted) shall be distributed pro rata among the holders of the outstanding shares of Common Stock and Series B Stock based on the number of shares of Common Stock into which such outstanding shares of Series B Stock are convertible pursuant to this Article V as of the date of the Liquidation Event (the "Series B Stock Special Liquidation Amount").

c. **Special Participation Rights of Junior Stock.** After payment in full of the Series B Liquidation Amount and the Series B Stock Special Liquidation Amount, the remaining assets of the Corporation shall be distributed solely to the holders of Junior Stock.

d. **Partial Payment.** If, upon a Liquidation Event, the assets of this Corporation available for distribution to its stockholders shall be insufficient to pay the full Series B Liquidation Price required to be paid to the holders of the outstanding shares of Series B Stock, then all of the assets of this Corporation legally available for distribution to the holders of equity securities shall be distributed ratably among the holders of the outstanding shares of Series B Stock.

e. **Notice of Liquidation Events.** This Corporation shall provide each holder of Series B Stock at least ten (10) days advance written notice of a Liquidation Event.

f. **Certain Transactions.** The following events shall be deemed to be a Liquidation Event: (A) a sale of all or substantially all of this Corporation's assets; (B) a sale of fifty percent (50%) or more of this Corporation's capital stock (except the sale of Series B Stock) in one transaction or a series of related transactions, which, if issued at the same time, would constitute fifty percent (50%) or more of the outstanding voting securities of this Corporation, except pursuant to an underwritten public

offering of this Corporation's securities; or (C) a consolidation, merger or reorganization of this Corporation with or into any other corporation or corporations if this Corporation's stockholders do not control a majority of the outstanding voting securities of such consolidated, merged or reorganized corporation or corporations; provided, however, that no Qualified Reorganization (as defined) shall constitute a Liquidation Event.

3. **Restriction on Redemption and Acquisitions.** So long as at least 6,800,000 shares of the Series B Stock are outstanding, the Corporation shall not, directly or indirectly, make any payment on account of, or set money or assets apart for a sinking or other similar fund for, the purchase, redemption or other retirement of, or otherwise acquire for value, any shares of Junior Stock or any warrants, rights, calls or options exercisable for or convertible into any such securities, whether for cash, obligations, other property or shares of the Corporation (other than for Junior Stock), except for purchases or redemptions from employees or former employees (other than W. P. Yeager, Eric Cunliffe, or John Pembroke or their family or affiliates) (i) in an amount not to exceed \$100,000 in any Fiscal Year or (ii) which have been approved by the Board of Directors (including at least one Series B Director).

D. Voting Rights.

1. **Stockholder Actions.** Except as otherwise required by law, the shares of Series B Stock shall be entitled to vote together with the shares of Common Stock as one class at all annual and special meetings of stockholders of the Corporation, and to act by written consent in the same manner as the Common Stock, in each case as provided in the following sentence: Each holder of Series B Stock shall be entitled to such number of votes per share of Series B Stock held by such holder on the record date fixed for such meeting, or on the effective date of such written consent, as shall be equal to the number of whole shares of Common Stock into which such Series B Stock is convertible immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent. Notwithstanding the foregoing provisions of this Section D, the affirmative vote of the holders of a majority of the outstanding shares of Series B Stock, voting as a single class, shall be required to effect (i) any amendment to the Articles of Incorporation that would increase or decrease the aggregate number or authorized shares of Series B Stock, increase or decrease the par value of the Series B Stock, or alter or change the powers, preferences, or special rights of the shares of Series B Stock, so as to affect them adversely, (ii) any merger, consolidation or other sale of the Company, including any sale or other transfer of all or substantially all of the Company's assets (except a "Qualified Reorganization"), and (iii) authorize any class or series of capital stock ranking pari-passu or senior to the Series B Stock.

E. **Conversion.** The holders of the outstanding shares of Series B Stock shall have the conversion rights set forth below (the "Conversion Rights"):

1. **Right to Convert.** Each share of Series B Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such shares, at the office of this Corporation or any transfer agent for the shares of Series B Stock, or Common Stock, into that number of shares of Common Stock which is equal to the quotient obtained by dividing (A) \$0.97 for each share of Series B Stock, by (B) the Series B Conversion Price, immediately prior to the time of such conversion. The "Series B Conversion Price" shall initially be \$0.97.

2. **Automatic Conversion.**

a. Each outstanding share of Series B Stock shall automatically be converted into shares of Common Stock based upon the Series B Conversion Price upon (i) the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offering and sale of shares of Common Stock for the account of this Corporation (other than a registration statement effected solely to implement an employee benefit plan, a transaction in

which Rule 145 of the Securities and Exchange Commission is applicable or any other form or type of registration in which the shares of Common Stock issuable upon conversion of the shares of Series B Stock cannot be included pursuant to the Securities and Exchange Commission rules or practices) resulting in aggregate proceeds to this Corporation (before the payment of underwriting discounts and commissions and the expense of the offering) of at least \$30,000,000 at a per share public offering price of at least Three and 88/100 Dollars (\$3.88) per share (a "Qualified Public Offering") (Appropriately Adjusted); or (ii) a merger or consolidation with or into another corporation or a sale of the shares of this Corporation's Common Stock or a sale of all or substantially all of this Corporation's properties and assets in which the shareholders of this Corporation receive cash or marketable securities equal to a per share valuation of at least Three and 88/100 (\$3.88) per share (Appropriately Adjusted) (any such merger, consolidation or sale a "Qualified Reorganization"); or (iii) the date on which the number of shares of Series B Stock outstanding is no more than twenty percent (20%) of the greatest number of shares of Series B Stock that has been outstanding at any time (Appropriately Adjusted); or (iv) the vote of no less than sixty-six and two-thirds percent (66-2/3%) of then outstanding shares of Series B Stock.

b. Upon the occurrence of an event specified in Paragraph E.2.a. above, the outstanding shares of Series B Stock shall be converted into shares of Common Stock, whether or not the certificates representing such shares are surrendered to this Corporation or its transfer agent; provided, however, that this Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares are either delivered to this Corporation or its transfer agent as provided below or the holder notifies this Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to this Corporation indemnifying this Corporation from any loss incurred by it in connection with the issuance of such certificate. Upon the occurrence of such automatic conversion of the outstanding shares of Series B Stock, the holders of the outstanding shares of Series B Stock may surrender the certificates representing such shares at the office of this Corporation or to any transfer agent for the shares of Series B Stock or Common Stock. Thereupon there shall be issued and delivered to such holder, promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the surrendered shares of Series B Stock of such holder were convertible on the date on which such automatic conversion occurred, and this Corporation shall promptly, pay in cash all declared but unpaid dividends on the shares of Series B Stock so converted.

3. **Mechanics of Conversion.** Each holder of outstanding shares of Series B Stock may, at the option of such holder of Series B Stock convert such Series B Stock into Common Stock, or following a mandatory conversion pursuant to Paragraph E.2. above, may obtain certificates evidencing the Common Stock, by surrendering the certificate or certificates therefor, duly endorsed, at the office of this Corporation or of any transfer agent for the shares of Series B Stock or Common Stock and shall give written notice to this Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Series B Stock being converted. Thereupon, this Corporation shall issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay all declared but unpaid dividends on the shares being converted in cash or, if this Corporation so elects or is legally or financially unable to, pay in cash, shares of Common Stock (valued at the Common Stock's fair market value at the time of surrender as determined in good faith by the Board of Directors including at least one Series B Director). Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

4. **Adjustment to Series B Conversion Price.**

a. **Adjustment for Stock Splits and Combinations.** If this Corporation at any time or from time to time after the Filing Date (as defined) effects a division of the outstanding shares of Common Stock, then the Series B Conversion Price shall be proportionately decreased and, conversely, if this Corporation at any time, or from time to time, after the Filing Date combines the outstanding shares of Common Stock, then the Series B Conversion Price shall be proportionately increased. Any adjustment under this Paragraph E.4.a. shall be effective on the close of business on the date such division or combination becomes effective.

b. **Adjustment for Certain Dividends and Distributions.** If this Corporation at any time or from time to time after the Filing Date pays or fixes a record date for the determination of holders of shares of Common Stock entitled to receive a dividend or other distribution in the form of shares of Common Stock, or rights or options for the purchase of, or securities convertible into, Common Stock, then in each such event the Series B Conversion Price shall be decreased, as of the time of such payment or, in the event a record date is fixed, as of the close of business on such record date, by multiplying the Series B Conversion Price by a fraction (i) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to the time of such payment or the close of business on such record date, as the case may be, and (ii) the denominator of which shall be (a) the total number of shares of Common Stock outstanding immediately prior to the time of such payment or the close of business on such record date, as the case may be, plus (b) the aggregate number of shares of Common Stock issuable in payment of such dividend or distribution or upon exercise of such option, or right, of conversion; provided, however, that if a record date is fixed and such dividend is not fully paid or such other distribution is not fully made on the date fixed therefor, then the Series B Conversion Price shall not be decreased as of the close of business on such record date as hereinabove provided as to the portion not fully paid or distributed and thereafter the Series B Conversion Price shall be decreased pursuant to this Paragraph E.4. as of the date or dates of actual payment of such dividend or distribution.

c. **Adjustments for Other Dividends and Distributions.** If this Corporation at any time or from time to time after the Filing Date pays, or fixes a record date for the determination of holders of shares of Common Stock entitled to receive, a dividend or other distribution in the form of securities of this Corporation other than shares of Common Stock or rights or options for the purchase of, or securities convertible into, Common Stock, then in each such event provision shall be made so that the holders of outstanding shares of Series B Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of this Corporation which they would have received had their respective shares of Series B Stock been converted into shares of Common Stock on the date one day before such event and had such holders thereafter, from the date of such event to and including the actual date of conversion of their shares, retained such securities, subject to all other adjustments called for during such period under this Paragraph E.4. with respect to the rights of the holders of the outstanding shares of Series B Stock. No adjustment shall be required under this Paragraph E.4.c. if the holders of the Series B Stock shall have received such dividend or distribution pursuant to Paragraph C.1. hereof, at the time such dividend or distribution was declared.

d. **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Filing Date the number of shares of Common Stock issuable upon conversion of the shares of Series B Stock is changed into the same or a different number of shares of any other class or classes of Stock or other securities, whether by recapitalization, reclassification or otherwise (other than a recapitalization, division or combination of shares or a stock dividend, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Paragraph E.4.), then in any such event each holder of outstanding shares of Series B Stock shall have the right thereafter to convert such shares of Series B Stock into the same kind and amount of Stock and other securities receivable upon such recapitalization, reclassification or other change, as if such holder's Series B Stock had been converted into Common Stock immediately prior to such transaction.

e. **Reorganizations, Mergers, Consolidations or Sales of Assets.** If at any time or from time to time after the Filing Date there is a capital reorganization of the Common Stock (other than a recapitalization, division, combination, reclassification or exchange of shares provided for elsewhere in this Paragraph E.4.) or a merger or consolidation of this Corporation into or with another corporation or a sale of all or substantially all of this Corporation's properties and assets to any other person, then, as a part of such capital reorganization, merger, consolidation or sale, provision shall be made so that the holders of outstanding shares of Series B Stock shall thereafter receive upon conversion thereof the number of shares of stock or other securities or property, to which a holder of the number of shares of Common Stock into which their shares of Series B Stock were convertible immediately prior to such transaction would have been entitled as the result of the consummation of any such capital reorganization, merger, consolidation or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Paragraph E.4. with respect to the rights of the holders of the outstanding shares of Series B Stock after such capital reorganization, merger, consolidation, or sale. The provisions of this Paragraph E.4. (including adjustment of the Series B Conversion Price and the number of shares into which the outstanding shares of Series B Stock may be converted) shall be applicable after that event and be as nearly equivalent to such Conversion Prices and number of shares as may be practicable. The Corporation shall not effect any such reorganization, merger or consolidation or sale unless prior to or simultaneously with the consummation thereof the successor corporation or other entity (if other than the Corporation) resulting from such reorganization, merger or consolidation or the person acquiring the properties and assets or such other corporation or entity as may be appropriate shall expressly assume the obligation to deliver the securities or other assets which the holders of Series B Stock are entitled to receive hereunder.

f. **Sale of Shares Below Conversion Price.**

1. If, at any time or from time to time after the Filing Date, this Corporation issues or sells, or is deemed by the express provisions of this Paragraph E.4. to have issued or sold, "Additional Shares of Common Stock" (as hereinafter defined) for an Effective Price (as hereinafter defined) less than the then current Series B Conversion Price, other than (A) as a dividend or other distribution on any class of stock as provided in Paragraph E.4.b. above or (B) upon a division of shares of Common Stock as provided in Paragraph E.4.a. above, then, in any such event, the Series B Conversion Price shall be reduced, as of the close of business on the date of such issuance or sale, to an amount determined by multiplying the Series B Conversion Price by a fraction (A) the numerator of which shall be (x) the number of shares of Common Stock outstanding at the close of business on the day immediately preceding the date of such issuance or sale, plus (y) the number of shares of Common Stock which the aggregate consideration received (or by the express provisions hereof deemed to have been received) by this Corporation for the total number of Additional Shares of Common Stock so issued or sold would purchase at such Series B Conversion Price and (B) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of such issuance or sale after giving effect to such issuance or sale of Additional Shares of Common Stock. For the purpose of the calculation described in this Paragraph E.4.f., the number of shares of Common Stock outstanding shall include, in addition to the number of shares of Common Stock actually outstanding, (A) the number of shares of Common Stock into which the then outstanding shares of Series B Stock could be converted if fully converted on the day immediately preceding the issuance or sale or deemed issuance or sale of Additional Shares of Common Stock; and (B) the number of shares of Common Stock which would be obtained through the exercise or conversion of all Convertible Securities (as hereinafter defined) outstanding on the day immediately preceding the issuance or sale or deemed issuance or sale of Additional Shares of Common Stock.

2. For the purpose of making any adjustment required under this Paragraph E.4.f. the consideration received by this Corporation for any issuance or sale of securities shall (A) to the extent it consists of property other than cash, be the fair value of that property as reasonably

determined in good faith by a majority of the Board of Directors (including at least one Series B Director); and (B) if Additional Shares of Common Stock, Convertible Securities or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of this Corporation for a consideration which covers both, be the portion of the consideration so received reasonably determined in good faith by a majority of the Board of Directors (including at least one Series B Director) to be allocable to such Additional Shares of Common Stock or Convertible Securities or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities.

3. For the purpose of the adjustment required under this Paragraph E.4.f. if this Corporation issues or sells any rights or options for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being hereinafter referred to as "Convertible Securities") and if the Effective Price (as defined in E.4.f.5 below) of such Additional Shares of Common Stock is less than the then current Series B Conversion Price, this Corporation shall be deemed to have issued, at the time of the issuance of such rights, options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration therefor an amount equal to (A) the total amount of the consideration, if any, received by this Corporation for the issuance of such rights or options or Convertible Securities plus (B) in the case of such rights or options, the minimum amount of consideration, if any, payable to this Corporation upon the exercise of such rights or options or, in the case of Convertible Securities, the minimum amount of consideration, if any, payable to this Corporation upon the conversion thereof. Thereafter, no further adjustment of the Series B Conversion Price shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire or otherwise terminate without having been exercised, the Series B Conversion Price shall thereafter be the Series B Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and were issued or sold for the consideration actually received by this Corporation upon such exercise plus (A) the consideration, if any, actually received for the granting of all such rights or options, whether or not exercised, (B) the consideration, if any, actually received by issuing or selling the Convertible Securities actually converted and (C) the consideration, if any, actually received on the conversion of such Convertible Securities. However, if any such rights or options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Conversion Price for the Series B Stock, and any subsequent adjustments based thereon, shall upon any such increase or decrease becoming effective be recomputed to reflect such increase or decrease insofar as it affects such rights, options or the rights of conversion or exchange under such Convertible Securities.

4. For the purpose of any adjustment required under this Paragraph E.4.f. if (a) this Corporation issues or sells any rights or options for the purchase of Convertible Securities and (b) if the Effective Price of the Additional Shares of Common Stock underlying such Convertible Securities is less than the Series B Conversion Price, then in each such event this Corporation shall be deemed to have issued at the time of the issuance of such rights or options the maximum number of Additional Shares of Common Stock issuable upon conversion of the total number of Convertible Securities covered by such rights or options (as set forth in the legal instruments setting forth the terms of such Convertible Securities) and to have received as consideration for the issuance of such Additional Shares of Common Stock an amount equal to the amount of consideration, if any, received for the issuance of such rights or options plus (A) the minimum amount of consideration, if any, payable upon the exercise of such rights or options and (B) the minimum amount of consideration, if any, payable upon the conversion of such

Convertible Securities. No further adjustment of the Series B Conversion Price shall be made as a result of the actual issuance of the Convertible Securities upon the exercise of such rights or options or upon the actual issuance of Additional Shares of Common Stock upon the conversion of such Convertible Securities. The provisions of Paragraph E.4.f.3. for the adjustment of the Series B Conversion Price upon the expiration of rights or options or the rights of conversion of Convertible Securities shall apply mutatis mutandis upon the expiration of the rights, options and Convertible Securities referred to in this Paragraph E.4.f.4.

5. "Additional Shares of Common Stock" shall mean all shares of Common Stock issued or deemed to be issued under this Paragraph E.4.f. after the Filing Date, other than (A) shares of Common Stock issued upon conversion of the shares of Series B Stock; (B) shares of Common Stock or options to purchase Common Stock issued to employees of or consultants or advisers to this Corporation subsequent to the Filing Date pursuant to a stock grant or option plan or other employee or consultant stock incentive plan and approved by the compensation committee of the Board of Directors; (C) shares of Common Stock issued upon the exercise of warrants, options or other rights issued by this Corporation on or prior to the Filing Date and identified on Schedule 3.2 to the Purchase Agreement (as defined); (D) the re-issuance by the Corporation of any shares of Common Stock or other securities to purchase Common Stock outstanding as of the Filing Date and identified on Schedule 3.2 to the Stock Purchase Agreement to a different person from the holder of such securities; and (E) shares of Common Stock issued by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (A), (B), (C) (D) and this clause (E). The "Effective Price" of Additional Shares of Common Stock shall mean the quotient obtained by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, under this Paragraph E.4. into the aggregate consideration received, or deemed to have been received for such Additional Shares of Common Stock.

5. **Certificate of Adjustment.** On each adjustment of the Series B Conversion Price, or the number of shares of Common Stock or other securities issuable upon conversion of the shares of Series B Stock, this Corporation shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series B Stock, a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based.

6. **Fractional Shares.** The Company shall issue fractional shares of Common Stock upon conversion of the shares of Series B Stock unless the holder elects otherwise pursuant to the following scenario. In lieu of any fractional share to which the holder of such shares would otherwise be entitled, such holder may require this Corporation to pay cash equal to the product of (a) such fraction multiplied by (b) the fair market value of one share of the Common Stock on the date of conversion. The fair market value shall be determined by the average trading price of the Common Stock over the past five (5) trading days, if such a price is available, otherwise it shall be as determined in good faith by the Board of Directors.

7. **Reservation of Stock Issuable Upon Conversion.** This 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 Series B Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series B Stock.

8. **Notices.** Any notice required by the provisions of this Section E to be given to a holder of shares of Series B Stock, shall be deemed given upon the earlier of actual receipt or seventy-two (72) hours after the same has been deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, addressed to the holder at the address of such holder appearing on the books of this Corporation.

F. Definitions. Unless the context clearly requires otherwise, the following terms when used herein have the respective meanings indicated:

"Additional Shares of Common Stock" shall have the meaning specified in Paragraph E.4.f.5.

"Appropriately Adjusted" shall mean appropriately adjusted for stock splits, stock dividends, combinations, recapitalizations and the like.

"Conversion Rights" shall have the meaning specified in the introduction to Section E.

"Convertible Securities" shall have the meaning specified in Paragraph E.4.f.3.

"Corporation" shall have the meaning specified in Article I.

"Effective Price" shall have the meaning specified in Paragraph E.4.f.5.

"Filing Date" shall mean the date on which these Amended and Restated Articles of Incorporation are filed with the Florida Secretary of State.

"Fiscal Year" shall mean each twelve month period from April 1 through March 31.

"Junior Stock" shall mean the Common Stock and any other stock of the Corporation, ranking junior to the Series B Stock as to dividend rights and rights on liquidation, dissolution and winding up.

"Liquidation Event" shall have the meaning specified in Paragraph C.2.a.

"Original Issue Date" shall mean the date that a share of Series B Stock is first issued by the Corporation with respect to such share.

"Qualified Public Offering" and "Qualified Reorganization" shall have the respective meanings specified in Paragraph E.2.a.

"Series B Conversion Price" shall have the meaning specified in Paragraph E.1.

"Series B Convertible Preferred Stock" shall have the meaning specified in Section C.

"Series B Director" shall mean any director elected by the holders of the Series B Stock pursuant to the Stockholders Voting Agreement.

"Series B Preferential Dividend" shall have the meaning specified in Paragraph C.1.a.

"Series B Preferential Liquidation Amount" shall have the meaning specified in Paragraph C.2.a.

"Series B Preferred Stock" shall have the meaning specified in Section C.

"Series B Stock" shall have the meaning specified in Section C.

"Stockholders Voting Agreement" shall have the meaning specified in Paragraph D.2.

G. **Replacement of Certificates.** Upon receipt of evidence reasonably satisfactory to this Corporation of the loss, theft, destruction, or mutilation of a certificate representing any of the outstanding shares of Preferred Stock or Common Stock, and, in the case of loss, theft, or destruction, the execution of an agreement satisfactory to this Corporation to indemnify this Corporation from any loss incurred by it in connection therewith, this Corporation will issue a new certificate representing such shares of Preferred Stock or Common Stock in lieu of such lost, stolen, destroyed or mutilated certificate.

H. **Restated Articles of Incorporation.** Upon the conversion of all outstanding shares of the Series B Stock, Sections C, D, E, F, G, H and I of this Article V (the "Deleted Provisions") shall be of no further force or effect, and these Articles of Incorporation may be restated by a resolution of the Board of Directors (and without further action by the stockholders) to delete the Deleted Provisions and renumber or restate the remaining provisions.

I. **Status of Redeemed Shares.** All shares of Series B Preferred Stock redeemed by the Company shall be retired and shall be restored to the status of authorized and unissued shares of preferred stock, without designation as to series and may thereafter be reissued as shares of any series of preferred stock other than shares of Series B Preferred Stock.

Article VI

Registered Office and Agent

The street address of the registered office of this corporation is 1270 Orange Ave., Ste. A, Winterpark, FL 32789 and the name of the registered agent of this corporation at the address is Perry Douglas West.

Article VII

Powers

The corporation shall have all of the corporate powers enumerated in the Florida Business Corporation Act.

Article VIII

Indemnification

Provided the person proposed to be indemnified is not shown to have not satisfied the requisite standard of conduct for permissive indemnification by a corporation as specifically set forth in the applicable provisions of the Florida Business Corporation Act (currently, Sections 607.0850(1) and (2) of the Florida Statutes), as may be amended from time to time, this Corporation shall indemnify its officers and directors, and may indemnify its employees and agents, from and against any and all of the expenses or liabilities incurred in defending a civil or criminal proceeding, or other matters referred to in or covered by said provisions, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, both as to action in their official capacity and as to action in any other capacity while an officer, director, employee or other agent. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaws, agreement, vote of stockholders or disinterested directors or otherwise. The indemnification provided herein

shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, the personal and other legal representatives of such person, and an adjunction of liability shall not affect the right to indemnification for those indemnified.

Article IX

Amendment

This Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in Article V of these Articles, and all rights conferred upon the stockholders herein are granted subject to this right.

IN WITNESS WHEREOF, for the purposes of Amending and Restating the Articles of Incorporation of this Corporation under the laws of the State of Florida, the undersigned officer has executed these Amended and Restated Articles of Incorporation this 8th day of February, 1999.



President / Eric H. Cunliffe