

M 64798

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MERGER OR SHARE EXCHANGE

AUTOMATED MERCHANT SERVICES, INC.

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Merger

05/19/04



## FLORIDA DEPARTMENT OF STATE

Glenda E. Hood  
Secretary of State

May 17, 2004

AUTOMATED MERCHANT SERVICES, INC.  
1999 UNIVERSITY DR  
SUITE 210  
CORAL SPRINGS, FL 33071SUBJECT: AUTOMATED MERCHANT SERVICES, INC.  
REF: M64798

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

THE NAME OF THE MERGING CORPORATION SHOULD READ: AUTOMATED MERCHANT SERVICE ACQUISITION CORP. ON THE SECOND PAGE OF THE ARTICLES OF MERGER.

PLEASE PROVIDE THE RESTATED ARTICLES MENTIONED AS AN ATTACEMENT IN THE PLAN OF MERGER.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

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Darlene Connell  
Document SpecialistFAX Aud. #: H04000105839  
Letter Number: 104A00034316

### ARTICLES OF MERGER (Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

First: The name and jurisdiction of the surviving corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (if known/ applicable)
Automated Merchant Services, Inc.	Florida	M64798

Second: The name and jurisdiction of each merging corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (if known/ applicable)
Automated Merchant Service	Florida	P03000083398
Acquisition Corp.		

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 TALLAHASSEE, FLORIDA

Third: The Plan of Merger is attached.

Fourth: The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

OR \_\_\_\_\_ (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

Fifth: Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the surviving corporation on August 7, 2003.

The Plan of Merger was adopted by the board of directors of the surviving corporation on \_\_\_\_\_ and shareholder approval was not required.

Sixth: Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the merging corporation(s) on August 7, 2003.

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on \_\_\_\_\_ and shareholder approval was not required.

(Attach additional sheets if necessary)

**Seventh: SIGNATURES FOR EACH CORPORATION**

Name of Corporation

Signature

Typed or Printed Name of Individual & Title

Automated Merchant

*Martin Blank*

MARTIN BLANK V.P.

Services, Inc.

Automated Merchant

*Barry Sloan*

Barry Sloan President

Service Acquisition Corp.

**PLAN OF MERGER**  
(Non Subsidiaries)

The following plan of merger is submitted in compliance with section 607.1101, F.S. and in accordance with the laws of any other applicable jurisdiction of incorporation.

First: The name and jurisdiction of the surviving corporation:

<u>Name</u>	<u>Jurisdiction</u>
Automated Merchant Services, Inc.	Florida

Second: The name and jurisdiction of each merging corporation:

<u>Name</u>	<u>Jurisdiction</u>
Automated Merchant Service Acquisition Corp	Florida
_____	_____
_____	_____
_____	_____

Third: The terms and conditions of the merger are as follows:

On the effective date, Automated Merchant Service Acquisition Corp. shall be merged with and into Automated Merchant Services, Inc.

Fourth: The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property are as follows:

*(Attach additional sheets if necessary)*

Fourth:

On the effective date, the issued and outstanding shares of capital stock of Automated Merchant Service Acquisition Corp. shall constitute all of the issued and outstanding shares of capital stock of the surviving corporation and the shareholders of Automated Merchant Services, Inc. shall receive \$1,500,000 in immediately available funds and a promissory note for \$1,200,000 in full payment and cancellation of their shares.

Fifth:

Articles of Amendment for the surviving corporation are attached:

**ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF AUTOMATED MERCHANT SERVICES, INC.**

M64798

*Pursuant to the provisions of section 607.1006, Florida Statutes, this Florida profit corporation adopts the following articles of amendment to its article of incorporation:*

**FIRST:** Amendment(s) adopted:

The Articles of Incorporation of Automated Merchant Services, Inc. are amended in its entirety to read as follows:

**ARTICLE I NAME**

The name of the corporation shall be: Automated Merchant Services, Inc.

**ARTICLE II PRINCIPAL OFFICES**

The principal place of business/mailing address is:

1999 University Drive, Suite 210  
Coral Springs, FL 33071

**ARTICLE III PURPOSES**

The purpose for which the corporation is organized is:

Any lawful purposes under the laws of the State of Florida

**ARTICLE IV SHARES**

The corporation is authorized to issue two classes of stock to be designated "Common Stock" and "Preferred Stock." The total number of shares of Common Stock that the Corporation is authorized to issue is one hundred (100) shares. The total number of shares of Preferred Stock that the Corporation is authorized to issue is one thousand (1000) shares. The Corporation's Board of Directors may divide the Preferred Stock into two series designated as "Series A Preferred" and "Series B Preferred."

The relative rights, preferences, privileges and restrictions granted to or imposed on the Common and Preferred Stock are as follows:

1. Voting. Except as provided below, only the holders of the Common Stock are entitled to vote on any matter coming before the shareholders for a vote.
2. Dividends.

- a. Series A Preferred. The Corporation shall pay the holders of the outstanding Series A Preferred, out of any funds legally available, cumulative dividends at the annual rate of 2% of the purchase price paid to the Corporation for such Series A Preferred ("Original Series A Purchase Price"), as adjusted (in the good faith determination of the Corporation's Board of Directors) for any consolidation, combination, stock distribution, stock dividend, stock split or similar event (any such event is called a "Recapitalization Event"). The Corporation shall pay such dividends in arrears on the 1<sup>st</sup> day of each month, whether or not declared by the Board of Directors. Such dividends shall accrue, but not compound, on each Series A Preferred share from the date such share is issued by the Corporation. The dividends on the Series A Preferred shall be cumulative (whether or not at any time there are net profits, surplus or other funds legally available for payment of dividends), so that if such dividends in respect of any previous or current dividend period, at the rate specified above, are not paid, such unpaid dividends shall accumulate in preference to the holders of the Series A Preferred until paid in full. The Series A Preferred shall not participate in any dividend payments on the Series B Preferred or on the Common Stock.
- b. Series B Preferred. The Corporation shall pay the holders of the outstanding Series B Preferred, out of any funds legally available, cumulative dividends at the annual rate of 10% of the purchase price paid to the Corporation for such Series B Preferred, as adjusted (in the good faith determination of the Corporation's Board of Directors) for any Recapitalization Event. The Corporation shall pay such dividends in arrears on the 1<sup>st</sup> day of each month, whether or not declared by the Board of Directors. Such dividends shall accrue, but not compound, on each Series B Preferred share from the date such share is issued by the Corporation. The dividends on the Series B Preferred shall be cumulative (whether or not at any time there are net profits, surplus or other funds legally available for payment of dividends), so that if such dividends in respect of any previous or current dividend period, at the rate specified above, is not paid, such unpaid dividends shall accumulate in preference to the holders of the Series B Preferred until paid in full. The Series B Preferred shall not participate in any dividend payments on the Series A Preferred or on the Common Stock.
- c. Common Stock. The Corporation shall not pay any dividends on the Common Stock unless all accrued dividends have been paid on the Preferred Stock.

3. Liquidation Preference.

- a. Preferences. If the Corporation liquidates, dissolves or winds up its business, whether voluntarily or involuntarily, the Corporation shall distribute its assets available for distribution to the shareholders in the following order:
- i. First, to the holders of the Series A Preferred and the Series B Preferred, pro rata, for any accrued, but unpaid dividends.



- ii. Next, to the holders of the Series A Preferred in an amount equal to the Original Series A Purchase Price (as adjusted in the good faith determination of the Corporation's Board of Directors for Recapitalization Events).
  - iii. Then to all of the holders of the Series A Preferred and Common Stock, pro rata based on the number of shares owned.
- b. Insufficient Assets. If the assets and funds to be distributed is insufficient to permit the payment to the holders specified in either clause i or ii above of the full amount required, then the full amount of assets and funds of the Corporation legally available shall be distributed ratably among the holders first specified in clause i, and then among the holders specified in clause ii, in proportion to the amount each such holder is entitled to receive in accordance with such clause.
- c. Reorganization or Merger. Any (i) sale or other disposition by the Corporation of all or substantially all of its assets, or (ii) the occurrence of any transaction or series of transactions (including any reorganization, merger or consolidation, but not including any public offering of the Corporation's securities) that results in the holders of the outstanding voting securities of the Corporation immediately prior to such transaction or series of transaction holding less than 50% of the voting securities of the surviving entity immediately after such transaction, shall be deemed a liquidation for purposes of this Section 3.
- d. Payments in Property. Whenever a distribution is payable in property other than cash, the dollar amount of such distribution shall be the fair market value of such property at the time of distribution as determined in good faith by the Board of Directors.
- e. Notice. The Corporation shall mail written notice of any liquidation, dissolution or winding up not less than 20 days prior to the payment date stated in such notice to each record holder of Series A Preferred and Common Stock. In addition, the Corporation shall mail written notice to each record holder of Series A Preferred of any impending transaction anticipated to result in a liquidation, dissolution or winding up not later than 20 days before the shareholders' meeting called to approve such transaction, and shall also notify such shareholders in writing of the final approval of such transaction.
4. Conversion. The holders of Series A Preferred have conversion rights as follows (the "Conversion Rights"):
- a. Right to Convert. Each share of Series A Preferred shall be convertible, at the option of the holder, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Series A Preferred, into 1 share of Common Stock, subject to adjustment (in the good faith determination of

the Corporation's Board of Directors) for Recapitalization Events.

- b. Automatic Conversion. Each share of Series A Preferred shall automatically be converted into 1 share of Common Stock, subject to adjustment (in the good faith determination of the Corporation's Board of Directors) for Recapitalization Events:
- i. On the affirmative vote or written consent of the holders of a majority of the shares of Series A Preferred outstanding.
  - ii. On the consummation of the Corporation's sale of its Common Stock in a firm commitment underwritten public offering resulting in gross proceeds (before underwriter discounts and commissions) to the Corporation of at least \$20,000,000 in the aggregate ("Public Offering").

5. Series B Preferred Put/Call Options.

- a. Options. At any time after August 7, 2004, the holders of the Series B Preferred may require the Corporation to repurchase, and the Corporation may require the holders of the Series B Preferred to sell to the Corporation, all, or any portion of, their shares of Series B Preferred, at a price per share equal to \$100 plus the amount of any unpaid dividends accrued in respect of such shares, subject to adjustment (in the good faith determination of the Corporation's Board of Directors) for Recapitalization Events.
- b. Exercise and Closing. The options provided in this Section 5 may be exercised by written notice delivered to the holders of the Series B Preferred Stock or the Corporation, as applicable, and the closing shall take place on the date specified in such notice, which shall not be earlier than 30 days nor later than 90 days after the date of such notice unless the parties agree otherwise. The closing shall take place at the Corporation's headquarters unless the parties agree otherwise. The purchase price shall be paid in immediately available funds.
- c. Power of Attorney. Each holder of Series B Preferred Stock hereby designates the officers of the Corporation, or any one or more of them, as his/her true and lawful attorney-in-fact, to complete and execute the necessary redemption documents in such holder's name, place and stead, with the same effect as if such holder had done so personally, if the holder fails to perform his/her duties and obligations under this Section 5 when requested by the Corporation. Such power of attorney is coupled with an interest, is irrevocable and shall survive the death, disability or incapacity of any holder.

6. Protective Provisions.

- a. Series A Preferred. In addition to any other rights provided by law, so long as any Series A Preferred is outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a

majority of the outstanding shares of Series A Preferred, voting separately as a class:

- i. Amend or change the rights, preferences or privileges of the Series A Preferred;
  - ii. Authorize, increase or issue shares of any class of stock having preferences superior to or on parity with the Series A Preferred;
  - iii. Reclassify any outstanding shares of the Corporation's capital stock into shares having preferences or priority as to dividends or assets senior to or on parity with the preferences of the Series A Preferred; or
  - iv. Sell all or substantially all of the Corporation's assets (whether by merger, consolidation or otherwise) as a result of which stockholders of the Corporation immediately prior to such transaction possess less than 50% of the voting power of the acquiring or surviving entity following such transaction.
- b. Series B Preferred. In addition to any other rights provided by law, so long as any Series B Preferred is outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of the outstanding shares of Series B Preferred, voting separately as a class:
- i. Amend or change the rights, preferences or privileges of the Series B Preferred;
  - ii. Authorize, increase or issue shares of any class of stock having preferences superior to or on parity with the Series B Preferred; or
  - iii. Reclassify any outstanding shares of the Corporation's capital stock into shares having preferences or priority as to dividends or assets senior to or on parity with the preferences of the Series B Preferred.

**ARTICLE V REGISTERED AGENT**

The name and Florida street address of the registered agent is

CT Corporation System, c/o CT Corporation System, 1200 South Pine Island Road,  
Plantation, FL 33324

**SECOND:** The date of this amendment's adoption is August 7, 2003.

**THIRD:** The amendment was approved by the unanimous written consent of the shareholders.

Signed on August 7, 2003.

*Martin Blank*

Signature:

*VICE*

Martin Blank, President

Registered Agent's Acceptance:

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this application, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties and I am familiar with and accept the obligations of my position as registered agent.

CT Corporation System

By: *Cornie Beyer*  
*Cornie Beyer, Special Asst. Secy.*