

A94000067707



ACCOUNT NO. : 072100000032

REFERENCE : 629810 10063A

AUTHORIZATION :

COST LIMIT : \$ 43.75

*Patricia P. Pitt*

ORDER DATE : March 17, 2000

ORDER TIME : 3:43 PM

ORDER NO. : 629810-005

CUSTOMER NO: 10063A

CUSTOMER: Geoffrey Vining, Esq  
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Lakeland, FL 33801

FILED  
00 MAR 17 PM 4:52  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

DOMESTIC AMENDMENT FILING

NAME: HIGHLANDER ENGINEERING, INC.

EFFECTIVE DATE:

800003174968--4

XX ARTICLES OF AMENDMENT

       RESTATED ARTICLES OF INCORPORATION

G. COULLETTE MAR 20 2000

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

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- CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Janna Wilson

EXAMINER'S INITIALS:

RECEIVED  
00 MAR 17 PM 4:41  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

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**HIGHLANDER ENGINEERING, INC.**

**ARTICLES OF AMENDMENT  
TO ARTICLES OF INCORPORATION**

The amendment to the Articles of Incorporation of Highlander Engineering, Inc. set forth below was approved by the consent of the directors and shareholders of that corporation pursuant to the provisions of Florida Statutes, Section 607.0821 and Section 607.0704, by a Consent of the Directors and Shareholders dated as of March 10, 2000.

FIRST: The Corporation's name is:

**HIGHLANDER ENGINEERING, INC.**

SECOND: The Corporation adopts the following as new Article III (Capital Stock) of its Articles of Incorporation:

ARTICLE III  
CAPITAL STOCK

A. Generally

The authorized capital stock of the Corporation will be as follows:

<u>Class of Stock</u>	<u>Number of Authorized Shares</u>	<u>Par Value</u>
Common Stock	15,000,000	\$.01
Series A Preferred Stock	2,329,563	\$.01

B. Series A Preferred Stock

1. Dividends. (a) The holders of record of shares of Series A Preferred Stock will be entitled to receive dividends (the "Series A Dividends") at a rate of six percent (6%) per annum on the Liquidation Price (as defined in Section 2(d) below), provided, however, that no Series A Dividend will accrue or otherwise be earned with respect to a share of Series A Preferred Stock on or after the earlier of March 10, 2005 or the Payment Trigger Date (as defined below) with respect to such share. Series A Dividends will be fully cumulative and prior and in preference to any declaration or payment of any dividend or other distribution on the Junior Securities (as defined in Section 2(a) below), other than a dividend or other distribution payable solely in common stock. The Series A Dividends will accrue only and not be payable until a Conversion Date (as defined in Section 4(d) below) (as to accrued Series A Dividends on the converted shares of Series A Preferred Stock only) or the date (including a Conversion Date, the "Payment Trigger Date") on which occurs (1) a merger or consolidation of the Corporation with or into another corporation that results in the

exchange of 50% or more of the outstanding shares of any class of capital stock of the Corporation outstanding immediately before the merger or consolidation for securities or other consideration issued or paid by the other corporation, (2) the resale by shareholders in any three-year period, of Common Stock cumulatively constituting 49% or more of the shares of Common Stock outstanding when the Series A Preferred Stock was initially issued, (3) the sale or transfer of all or substantially all of the assets of the Corporation, (4) the completion by the Corporation of a bona fide offering of its Common Stock meeting the definition of "Public Offering" as set forth in Section 4(b) below, or (5) the exercise by Investor of its redemption rights under Section 3 below. Within ten (10) days thereafter, all accrued and unpaid Series A Dividends then payable (if the Payment Trigger Date is caused by a conversion, as to accrued Series A Dividends on the converted shares only) will be payable in cash in one (1) lump sum payment to the holders of record of the Series A Preferred Stock (each, a "Record Holder" or more than one, "Record Holders") as they appear on the stock books of the Corporation on the Payment Trigger Date.

(b) The amount of dividends payable for any period that is shorter or longer than a full annual dividend period will be computed on the basis of a 365-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable. If a Series A Dividend cannot be paid in full, dividends will be paid, to the maximum possible extent, to the holders of the Series A Preferred Stock ratably based on the respective amount of Series A Dividends otherwise payable to them. The applicable rate for the Series A Dividends will increase from six (6%) per annum to fifteen percent (15%) per annum for any time period during which payment of a Series A Dividend is due but unpaid.

(c) The Corporation will not pay any dividends with respect to the Junior Securities if any shares of Series A Preferred Stock remain outstanding.

**2. Ranking; Preference on Liquidation.** (a) The Series A Preferred Stock ranks senior to every other class or series of the Corporation's preferred stock hereafter created and all of its Common Stock (collectively, the "Junior Securities").

(b) If the Corporation liquidates, dissolves, or winds up its affairs (voluntarily or involuntarily) (a "Liquidation Event"), after paying or providing for payment of its debts and other liabilities, the Corporation will pay to the Preferred A Shareholders, before paying any amount to the holders of Junior Securities, a cash amount for each share of Series A Preferred Stock equal to the Liquidation Price, as defined below, plus accrued and unpaid Series A Preferred Dividends. If its assets to be distributed among the holders of Series A Preferred Stock on a Liquidation Event are insufficient to permit the Corporation to pay the full Liquidation Price for each share of Series A Preferred Stock, plus accrued and unpaid Series A Preferred Dividends, the Corporation will distribute its assets among the holders of Series A Preferred Stock ratably based on the respective amounts otherwise payable to them.

(c) The following will, at the option of the holders of Series A Preferred Stock, be deemed to be a Liquidation Event and trigger the Corporation's obligation to pay the Liquidation Price, plus accrued and unpaid Series A Preferred Dividends: (1) a merger or consolidation of the Corporation with or into one or more corporations or other entities that results in the exchange of 50% or more of the outstanding shares of any class of capital stock of the Corporation outstanding

immediately before the merger or consolidation for securities or other consideration issued or paid by the other corporation; (2) the sale or transfer of all or substantially all of the assets of the Corporation; or (3) the resale by shareholders in any three-year period, of Common Stock cumulatively constituting 49% or more of the shares of Common Stock outstanding when the Series A Preferred Stock was initially issued. The Corporation shall notify the holders of Series A Preferred Stock in writing (the "Liquidation Event Notice") not later than twenty (20) days prior to the shareholders' meeting called to approve the Liquidation Event, if any, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for in this section or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein. The option of the holders of Series A Preferred Stock to have the foregoing events treated as Liquidation Events may be exercised by written notice given to the Corporation by holders of a majority of the outstanding shares of Series A Preferred Stock within twenty (20) days of the giving of the Liquidation Event Notice, acceptance or election of the option by a majority in interest shall be binding on all holders of Series A Preferred Stock. If the requirements of this subsection 2(c) are not complied with in connection with the Liquidation Event, the Corporation shall either:

(1) cause the closing of the deemed Liquidation Event to be postponed until the requirements of this subsection (c) have been complied with; or

(2) cancel such transaction that constituted a deemed Liquidation Event, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection (c).

(d) The "Liquidation Price" for a Liquidation Event will be the amount of \$1.7171 per share. The Corporation will pay the Liquidation Price to the holders of Series A Preferred Stock within thirty (30) days after the Company's receipt of notice from those holders of their option to have an event treated as a Liquidation Event under Section 2(c). The Corporation will pay to each holder of Series A Preferred Stock interest at an annual rate of fifteen (15%) percent on any part of the Liquidation Price not paid when due. If the Corporation at any time subdivides (by any stock split, stock dividend or otherwise) its outstanding shares of any series into a greater number of shares, the Liquidation Price for such series of Series A Preferred Stock in effect immediately prior to such subdivision will be proportionately reduced, and conversely, if the outstanding shares of any series of Series A Preferred Stock are combined into a smaller number of shares, the Liquidation Price for such series of Series A Preferred Stock in effect immediately prior to such combination will be proportionately increased.

**3. Redemption.** (a) Subject to the terms and conditions of this section, any holder of Series A Preferred Stock may require the Corporation to redeem its shares of Series A Preferred

Stock with cash at the redemption price per share determined pursuant to paragraph (d) of this Section 3 (the "Redemption Price").

(b)(i) On December 31, 2005, each holder of Series A Preferred Stock may require the Corporation to redeem up to one-third of the shares of such stock that it held as of that date; on December 31, 2006, each holder of Series A Preferred Stock may require the Corporation to redeem up to two-thirds of the shares of such stock that it held as of December 31, 2005, less the number of shares, if any, previously redeemed; and on December 31, 2007, and at any time thereafter, each holder of Series A Preferred Stock may require the Corporation to redeem all remaining shares of such stock that it still holds. During the period between May 1 and May 31 before each Redemption Date, the Corporation will notify each Series A Preferred Stock holder of the availability of this redemption option and specify the number of shares of Series A Preferred Stock subject to the option, the Redemption Price, and the time during which the holder must give notice to exercise the option.

(ii) As appropriate with respect to a redemption pursuant to this Section 3, December 31, 2005, 2006, and 2007 (or the later effective date after December 31, 2007, of holder's exercise of its redemption right) each constitutes a Redemption Date.

(c) Each holder of Series A Preferred Stock electing to require the Corporation to redeem its shares pursuant to this section will notify the Corporation of its election by means of certified mail, return receipt requested, addressed to the Corporation and mailed at least six months before the Redemption Date (determined without regard to any extension). The notice must specify (1) the Redemption Date; and (2) unless all shares eligible for redemption are to be redeemed, the number of shares of Series A Preferred Stock to be redeemed. Any notice given in this manner will be effective when sent. A holder of Series A Preferred Stock may cancel its notice with respect to a redemption (and nullify the related redemption) by notifying the Corporation by these means within ninety (90) days after its notice with respect to a redemption.

(d) The share price for a redemption of the Series A Preferred Stock will be the highest of the following: (1) the fair market value of the redeemed Series A Preferred Stock on the Redemption Date, as determined by independent appraisal (in accordance with the terms and conditions described below), plus accrued and unpaid dividends on those shares; (2) ten (10) times the Corporation's aggregate Earnings Per Share (as defined below) of the redeemed Series A Preferred Stock; (3) the Book Value (as defined below) of the redeemed Series A Preferred Stock; or (4) the actual amount paid by the redeeming holder with respect to the redeemed Series A Preferred Stock, plus any dividends accrued and unpaid on the redeemed shares to the Redemption Date. Any independent appraisal to determine the fair market value of the redeemed Series Preferred Stock will be performed by an independent, nationally recognized appraiser qualified in determining the fair market value of companies (a "Qualified Appraiser") acceptable to both the Board of Directors and a majority in interest of the Series A Preferred Stock holders. If the Board of Directors and the majority in interest of the Series A Preferred Stock holders cannot agree on an appraiser, each will select a Qualified Appraiser, and the fair market value of the redeemed Series A Preferred Stock will be determined by taking the average of the two Qualified Appraiser's valuations. In this valuation, the Qualified Appraiser(s) will not discount the appraised value for the lack of marketability, or illiquidity, or the minority interest status of the shares of Series A Preferred Stock. All costs relating to any appraisal(s) of the fair market value of the redeemed Series A Preferred

Stock will be paid by the Corporation. For purposes of this Agreement, the term "Book Value" means, as to any particular shares of stock, the aggregate book value per share of those shares as shown on the Corporation's books of account on the Redemption Date, as determined by the Corporation's independent certified public accountants. For purposes of this Agreement, the term "Earnings Per Share" means, as to any particular share of stock, the Corporation's net profit per share on an after-tax basis for the prior full four calendar quarters ending December 31, as determined based on the Corporation's unaudited financial statements for that time period, except for any holders of Series A Preferred Stock that have elected to extend the Redemption Date as provided in part (e) below.

(e) Any of the holders of the Series A Preferred Stock may elect to extend the Redemption Date for all or a portion of their shares to March 31 of the following year by notifying the Corporation of this election between June 1 and June 30 of the applicable year. For the holders of Series A Preferred Stock electing this extension, the Earnings Per Share will be measured based on the Corporation's net profit per share on an after-tax basis for the calendar year ended December 31, as reflected in the Corporation's audited financial statements for that year.

(f) The Corporation will pay the applicable Redemption Price to each holder of redeemed Series A Preferred Stock when the holder delivers to the Corporation (1) the certificate(s) evidencing the redeemed Series A Preferred Stock and (2) transfer instrument(s) sufficient to transfer to the Corporation the redeemed Series A Preferred Stock, free of any adverse interest. If a holder redeems less than all of the shares evidenced by a certificate, the Corporation will at its expense issue and deliver to the holder a new certificate evidencing the unredeemed shares.

(g) Provided that the Corporation deposits in a separate bank account, in trust solely for the express purpose of paying the Redemption Price, sufficient funds to pay the aggregate Redemption Price payable for all redeemed shares and those funds are tendered or disbursed in payment of the Redemption Price on the Redemption Date, (1) no interest will accrue on the Redemption Price after the Redemption Date, (2) the redeemed shares of Series A Preferred Stock will cease to be outstanding at the close of business on the Redemption Date (whether or not the holder surrenders its certificate), and (3) the holders of the redeemed shares will cease to have any further rights with respect to those shares, except to receive payment of the Redemption Price. The Corporation will pay to each holder of redeemed Series A Preferred Stock interest at an annual rate of the then current prime interest rate (as quoted in the Wall Street Journal) plus four percent on any amount of the Redemption Price not paid when due.

(h) No share of Series A Preferred Stock with respect to which a Conversion Date (as defined below) or election by the holder of Series A Preferred Stock to receive payment of the Liquidation Price pursuant to Section 2(c) has occurred may be redeemed.

**4. Conversion.** Each share of Series A Preferred Stock is convertible by its holder into Common Stock as follows:

(a) **Conversion Option.** Subject to the terms and conditions of this Section 4, the holder of any share of Series A Preferred Stock may, at the holder's option, at any time and from time to time (except on or following the Redemption Date of the shares proposed to be converted), convert any or all of its shares of Series A Preferred Stock into the number of fully paid and non-

assessable shares of Common Stock determined pursuant to Section 4(c). The holders of Series A Preferred Stock may continue to exercise this conversion option notwithstanding their receipt of notice of a Liquidation Event.

(b) **Mandatory Conversion.** All shares of Series A Preferred Stock then outstanding will automatically be converted into the number of fully paid and non-assessable shares of Common Stock set forth in Section 4(c) as of the date that the Securities and Exchange Commission declares effective a registration of the Common Stock under the Securities Act of 1933, as amended, and the Corporation completes a bona fide offering of its Common Stock to the general public (a "Public Offering") (1) that is underwritten on a firm commitment basis by one or more nationally recognized underwriters, (2) from which the Corporation receives net cash proceeds of at least \$25,000,000, and (3) that provides for an initial offering price to the public per share of Common Stock of at least three times the holder's cost per share of purchasing the Series A Preferred Stock on initial issuance.

(c) **Series A Conversion Price.** Each share of Series A Preferred Stock will be convertible into such number of shares of Common Stock as is determined by dividing \$1.7171 by the Series A Conversion Price in effect on the Conversion Date (as defined below). The "Series A Conversion Price" at which shares of Common Stock will be issuable on conversion of shares of the Series A Preferred Stock initially will be \$1.7171 and, thus, initially each such share of Series A Preferred Stock is convertible into one share of Common Stock. The Series A Conversion Price will be subject to adjustment as set forth in Section 4(e). If the holder converts more than one share of Series A Preferred Stock, the number of shares of Common Stock issuable on conversion will be computed on the basis of the aggregate number of shares of Series A Preferred Stock so converted.

(d) **Mechanics of Conversion.** A holder may exercise the conversion right specified in Section 4(a) as to all or any part of its Series A Preferred Stock by surrendering to the Corporation (or to another person designated by the Board of Directors) the certificates evidencing the shares it elects to convert, endorsed and assigned to the Corporation in blank, and accompanied by written notice confirming the holder's exercise of its conversion option as to all or a specified portion of the shares evidenced by the certificates. Each holder of outstanding Series A Preferred Stock will promptly surrender its stock certificates to the Corporation on a mandatory conversion pursuant to Section 4(b). Conversion of shares of Series A Preferred Stock to Common Stock will be effective when the holder delivers to the Corporation notice of its election to convert and certificates evidencing the converted shares (for a conversion pursuant to Section 4(a)) or on the date of closing of the Public Offering (for a conversion pursuant to Section 4(b)) (the foregoing respective dates are the "Conversion Date".) As promptly as practicable after the Conversion Date and in any event within ten days after surrender of the certificate or certificates representing converted shares of Series A Preferred Stock, the Corporation will issue and deliver, or cause to be issued or delivered, at its expense to a converting holder (or to another person designated in writing by the holder consistently with the provisions of the Shareholder Agreement dated the same date as this Agreement), a certificate evidencing the number of whole shares of Common Stock to which such holder is entitled. The person in whose name the certificate or certificates for Common Stock are to be issued will be deemed the holder of such Common Stock as of the close of business on the Conversion Date. On conversion of only a portion of the number of shares evidenced by a certificate surrendered for conversion, the Corporation will issue and deliver at its expense to the converting

holder (or to another person designated in writing by the holder, consistently with the provisions of the Shareholder Agreement) a new certificate for the number of shares of Series A Preferred Stock evidencing the unconverted portion of the surrendered certificate. At the close of business on the Conversion Date, (1) the converted shares of Series A Preferred Stock will cease to be outstanding, (2) the holders of the converted shares will cease to have any further rights with respect to those shares, except to receive Common Stock and cash (as specified below) with respect to the converted shares, and (3) the holders of the converted shares will be deemed to have become the record holder of the Common Stock for all purposes.

(e) **Adjustments of Series A Conversion Price On Issuance of Common Stock.** If the Corporation issues or sells (or pursuant to subparagraphs (e)(1) through (e)(8), is deemed to issue or sell) any shares of Common Stock for consideration per share less than the Series A Conversion Price in effect immediately before the issuance or sale, the Series A Conversion Price will be reduced to the price, calculated to the nearest one-hundredth of a cent, determined by dividing (1) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately before such issuance or sale (including as outstanding all shares of Common Stock issuable on conversion of outstanding Series A Preferred Stock and on exercise of outstanding options) multiplied by the then existing Series A Conversion Price and (b) the consideration, if any, received by the Corporation upon such issuance or sale, by (2) the total number of shares of Common Stock outstanding immediately after such issuance or sale (including as outstanding all shares of Common Stock issuable on conversion of outstanding Series A Preferred Stock, based on the conversion ratio in effect immediately before the issuance, and on exercise of outstanding options).

For purposes of this paragraph (e), the following subparagraphs (e)(1) to (e)(8) also apply to conversion of the Series A Preferred Stock to Common Stock:

(e)(1) **Issuance of Rights or Options.** In case the Corporation in any manner issues (whether directly or by assumption in a merger or otherwise) warrants or other rights to subscribe for or purchase, or options to purchase, Common Stock or stock or securities convertible into or exchangeable for Common Stock (the warrants, rights or options are "Options" and the convertible or exchangeable stock or securities are "Convertible Securities"), whether or not the Options or Convertible Securities are immediately exercisable, and the price per share (determined, for a formula price, based on current circumstances or, if dependent on future circumstances, facts that would result in the lowest price per share) for which Common Stock is issuable on the Options' exercise or on the conversion or exchange of the Convertible Securities (determined by dividing (1) the total amount, if any, payable to the Corporation as consideration for the Option grant, plus the aggregate amount of additional consideration payable to the Corporation on the Option exercise, plus, in the case of any Options that relate to Convertible Securities, any consideration payable on the issue or sale of the Convertible Securities and on their conversion or exchange, by (2) the total number of shares of Common Stock issuable upon the Options' exercise or on the conversion or exchange of Convertible Securities issuable on the Options' exercise) is less than the Series A Conversion Price in effect immediately before the Option grant, the total number of shares of Common Stock issuable on the Options' exercise or on conversion or exchange of any Convertible Securities issuable on the Options'



exercise will be deemed issued for such price per share on the date of the Options' grant and thereafter will be deemed outstanding. Except as otherwise provided in subparagraph (e)(3), the Series A Conversion Price will not be further adjusted when the Common Stock is actually issued on exercise of the Options or conversion or exchange of Convertible Securities.

**(e)(2) Issuance of Convertible Securities.** In case the Corporation in any manner issues (whether directly or by assumption in a merger or otherwise) or sells Convertible Securities, whether or not the rights to exchange or convert the Convertible Securities are immediately exercisable, and the price per share (determined, in the case of a formula price, on the basis of current circumstances or, if dependent on future circumstances, the facts would result in the lowest price per share) for which Common Stock is issuable upon the conversion or exchange (determined by dividing (1) the total amount payable to the Corporation as consideration for the issue or sale of the Convertible Securities, plus the aggregate amount of additional consideration, if any, payable to the Corporation on the their conversion or exchange, by (2) the total number of shares of Common Stock issuable on conversion or exchange of all such Convertible Securities) is less than the Series A Conversion Price in effect immediately before the issue or sale, then the total number of shares of Common Stock issuable upon conversion or exchange of the Convertible Securities will be deemed to be issued for such price per share as of the date of the issue or sale of the Convertible Securities and thereafter will be deemed outstanding, provided that (a) except as provided in subparagraph (e)(3), no further adjustment of the Series A Conversion Price will be made otherwise when the Common Stock is actually issued on conversion or exchange of the Convertible Securities and (b) the Series A Conversion Price will not be further adjusted pursuant to this subsection for the issue or sale of Convertible Securities on the exercise of Options to purchase the Convertible Securities if the Series A Conversion Price has been or will be adjusted for the transaction pursuant to other provisions of this paragraph (e).

**(e)(3) Change in Option Price or Conversion Rate.** Upon the happening of any of the following events, namely if the purchase price provided for in any Option referenced in subparagraph (e)(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph (e)(1) or (e)(2), or the rate at which Convertible Securities referred to in subparagraph (e)(1) or (e)(2) are convertible into or exchangeable for Common Stock changes at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Series A Conversion Price in effect at the time of such event will be readjusted to the Series A Conversion Price which would have been effective at that time had the Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, when initially granted, issued or sold; and on the expiration of the Options or the termination of a right to convert or exchange any Convertible Securities, the Series A Conversion Price then in effect will be increased to the Series A Conversion Price that would have been in effect at the time of the expiration or termination had the Options or Convertible Securities never been issued.

**(e)(4) Stock Dividends and Subdivisions.** In case the Corporation declares a dividend or makes any other distribution on stock of the Corporation payable in Common Stock (except for dividends or distributions payable in shares of Common Stock upon the Series A Preferred Stock), Options, or Convertible Securities, the Common Stock, Options, or Convertible Securities, as the case may be, issuable in payment of the dividend or distribution will be deemed to have been issued or sold (as of the record date) without consideration (except for the consideration payable to exercise any Options or convert any Convertible Securities). In case the Corporation subdivides its outstanding shares of Common Stock into a greater number of shares, the Conversion Price then in effect will be proportionately reduced to reflect the subdivision. In case the Corporation combines its outstanding shares of Common Stock into a fewer number of shares, the Conversion Price then in effect will be proportionately increased to reflect the combination. An adjustment made pursuant to this paragraph (e)(4) will become effective retroactively (x) in the case of any such dividend or distribution, to a date immediately following the close of business on the record date for determination of the holders of Common Stock entitled to receive such dividend or distribution, or (y) in the case of any such subdivision or combination, to the close of business on the day upon which such corporate action becomes effective.

**(e)(5) Consideration for Stock.** In case any shares of Common Stock, Options, or Convertible Securities are issued or sold for cash, the consideration deemed to be received will be the amount actually received by the Corporation, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection with the issuance or sale. In case any shares of Common Stock, Options, or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation will be the fair value of such consideration as determined in good faith by the Corporation's Board of Directors, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection with the issuance or sale.

**(e)(6) Record Date.** If the Corporation sets a record date to determine the holders of its Common Stock entitled (1) to receive a dividend or other distribution payable in Common Stock, Options, or Convertible Securities or (2) to subscribe for or purchase Common Stock, Options, or Convertible Securities, the record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of a dividend or the making of another distribution or the date of the granting of such right of subscription or purchase, as the case may be.

**(e)(7) Treasury Shares.** The number of shares of Common Stock outstanding at any given time does not include shares owned or held by or for the account of the Corporation, and its disposition of these shares will be considered an issue or sale of Common Stock for purposes of this subparagraph (e)(7).

**(e)(8) Reports as to Adjustments.** Whenever the Series A Conversion Price is adjusted as provided in this subsection, the Corporation will promptly compute the adjustment and furnish to each holder of shares of the Series A Preferred Stock a certificate, signed by a principal financial officer of the Corporation, setting forth the new Series A Conversion Price and the number of shares of Common Stock into which each share of

Series A Preferred Stock is convertible as a result of the adjustment, a brief statement of the facts requiring the adjustment, the computation of the adjustment, and when the adjustment will become effective.

(f) **Certain Issues of Common Stock Excepted.** Notwithstanding the foregoing provisions, the Corporation will not be required to adjust the Series A Conversion Price in the case of the issuance of, in the case of the Common Stock, up to the aggregate of (1) 2,807,644, additional shares of Common Stock that have been issued or are available for issuance pursuant to options to the Corporation's current employees and future employees who are not employees on the Closing Date (in each case, appropriately adjusted to reflect the occurrence of an event described in paragraph (e)), and (2) shares of Common Stock issuable on conversion of the Series A Preferred Stock.

(g) **Reservation of Stock Issuable Upon Conversion.** The Corporation will reserve out of its authorized but unissued Common Stock, solely for the purposes of effecting the conversion of the Series A Preferred Stock, the number of shares of Common Stock issuable on conversion of all outstanding Series A Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock are not sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to such other remedies as are available to the holder to the Series A Preferred Stock, the corporation shall take the corporate action that in the opinion of its counsel is necessary to increase its authorized but unissued shares of Common Stock to the number of shares that are sufficient for those purposes, including engaging in its best efforts to secure the requisite shareholder approval of any needed amendment to these Articles of Incorporation.

(h) **Payment of Taxes.** The Corporation will pay any and all taxes, documentary or otherwise, that are payable with respect to the issuance or delivery of Common Stock on conversion of the Series A Preferred Stock. The Corporation will not, however, be required to pay tax with respect to a transfer involved in the issue or transfer and delivery of shares of Common Stock in a name other than the record name of the converted Series A Preferred Stock, and no issuance or delivery will be made unless and until the person requesting such issue pays to the Corporation the amount of any such tax or establishes to the Corporation's satisfaction payment of the tax or that no tax is due. In no event need the Corporation pay or reimburse a registered holder for any income tax or ad valorem tax payable by the holder because of the issuance of Common Stock on conversion of Series A Preferred Stock.

(i) **No Reissuance of Series A Preferred Stock.** The Corporation will cancel shares of Series A Preferred Stock converted pursuant to this Section 4.

(j) **No Conversion of Series A Preferred Stock Being Redeemed.** Notwithstanding this Section 4, no share of Series A Preferred Stock for which the holder has given a redemption notice pursuant to Section 3 may be converted into Common Stock, unless the holder effectively withdraws the redemption notice and nullifies the redemption within the time period permitted under Section 3(c).

(k) **Adjustments for Merger, Consolidation, etc.** In the case of any classification, reclassification, or other reorganization of the Corporation's capital stock, or in the case of the merger or consolidation of the Corporation with or into another corporation, or the conveyance to

another corporation of all or any major portion of the Corporation's assets, then, as part of the classification, reclassification, merger, consolidation, or conveyance, adequate provision will be made for each holder of Series A Preferred Stock, on exercise of its conversion privilege, to receive on the same basis and conditions set forth in this Section 4 with respect to the Common Stock, the stock, securities, or other property that the holder would have been entitled to receive on such classification, reclassification, merger, consolidation, or conveyance, if the holder had exercised the conversion privilege immediately before the classification, reclassification, merger, consolidation, or conveyance, and in any such case appropriate provision will be made with respect to the rights and interests of the holder to the end that the provisions of this Section 4 (including without limitation, provision for adjustment of the Series A Conversion Price) will be applicable to the shares of stock, securities, or other property deliverable on the exercise of the conversion privilege; and, as a condition of any consolidation, merger, or conveyance, any corporation that succeeds to the Corporation by reason of the merger, consolidation or conveyance will assume the obligation to deliver, on exercise of the conversion privilege, the shares of stock, securities or other considerations that the holders of the Series A Preferred Stock are entitled to receive pursuant to this Section 4.

**5. Voting.** In addition to its voting rights specially provided for in these articles or granted by applicable law, each holder of Series A Preferred Stock will be entitled to voting rights with respect to all matters on which holders of Common Stock have the right to vote. Each holder of Series A Preferred Stock may vote that number of votes equal to the number of whole shares of Common Stock into which the holder's shares of Series A Preferred Stock would be convertible pursuant to the provisions of Section 4 as of the record date for the determination of shareholders entitled to vote on the matter. Each holder's votes will be counted together with all other shares of capital stock having general voting powers and not separately as a class, except as otherwise provided in these articles or by applicable law. In cases in which the holders of shares of Series A Preferred Stock are entitled to approve a matter or vote separately as a class, each holder will be entitled to one vote for each of its shares and the vote of a majority of the outstanding shares of Series A Preferred Stock will constitute the action of that class.

**6. Authorization of Additional Classes of Shares.** So long as shares of Series A Preferred Stock remain outstanding, the Corporation will not, without the vote or prior written consent of holders of a majority in interest of the then outstanding shares of Series A Preferred Stock, authorize the creation of a new class of shares having dividend rights or liquidation preferences equal or superior to the Series A Preferred Stock, or improve the dividend rights or liquidation preferences of the Junior Securities such that they become equal or superior to the Series A Preferred Stock.

**7. Reissuance of Shares.** Any shares of Series A Preferred Stock redeemed or otherwise reacquired by the Corporation will be canceled and not available for further issuance.

8. **Definition.** As used in this Article, the term "cash" means immediately available funds constituting legal tender of the United States of America.

THIRD: The Corporation adopts the following as new Article VIII (Amendment of Articles of Incorporation) of its Articles of Incorporation:

ARTICLE VIII - Amendment of Articles of Incorporation

So long as any shares of the Series A Preferred Stock are outstanding, the Corporation will not, without the affirmative vote of holders of a majority in interest of the Series A Preferred Stock voting together as a separate class, in addition to any other vote, consent, or approval required by law or otherwise, amend the Corporation's Articles of Incorporation or Bylaws in any manner which adversely affects the relative rights and preferences of the Series A Preferred Stock or changes any of the rights, preferences, or interests of the Series A Preferred Stock.

FOURTH: The Corporation adopts the following as new Article VI (Directors) of its Articles of Incorporation:


ARTICLE VI - Directors

The Board of Directors of the Corporation will consist of up to seven (7) Directors. So long as any of the shares of Series A Preferred Stock originally issued are outstanding, (a) the holders of the Series A Preferred Stock, voting as a class, will nominate and elect two (2) directors, of which one will be designated by Lovett Miller Venture Fund II, Limited Partnership, and one will be designated by Wind River Systems, Inc. (b) the holders of the Common Stock, voting as a class, will nominate and elect five (5) directors, of which at least three (3) directors will be persons who are not employees of the Company and not related to any officer or director of the Company. Directors so elected may be removed and vacancies in such seats filled only by like action. Each class may, at its option, elect fewer than the number of directors designated by this Article. The Board of Directors will elect Audit and Compensation Committee members who are not employees or officers of the Corporation. Each of these committees will have two members, of which at least one member of each committee must be a director elected by the holders of the Series A Preferred Stock. The committees will act only with approval of both directors on the committee. All directors shall sign confidentiality agreements in form acceptable to the Company and the holders of the Series A Preferred Stock.

FIFTH: The effective date, as provided for at F.S. 607.0123(1), of this document is March 10, 2000.

IN WITNESS WHEREOF, the Corporation has caused these ~~Articles~~ Articles of Amendment to its Articles of Incorporation to be executed and attested by its authorized officer as of March 10, 2000.

**HIGHLANDER ENGINEERING, INC.**

By:   
Kenneth R. Black, President

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