

L. VAN STILLMAN, P.A.
ATTORNEY-AT-LAW

P96000083992

301 YAMATO ROAD, SUITE 1200
BOCA RATON, FLORIDA 33431
(561) 989-8400

FILED
MAY 22 AM 8:49
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

May 8, 1998

Department of State
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

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*****87.50 *****87.50

RE: Access Power, Inc.

Dear Sir/Madam:

Enclosed, please find a check in the amount of \$87.50 representing the filing fee for the enclosed Articles of Amendment and the fee for a certified copy of the Articles. Please return a certified copy of the Articles to this office in the enclosed, self-addressed, stamped envelope provided for you.

Should you have any questions, please do not hesitate to contact the undersigned at (561) 989-8400.

Very truly yours,
LAW OFFICE OF L. VAN STILLMAN, P.A.



L. Van Stillman, Esquire

Amend

LVS:kni
Enclosures

VS MAY 26 1998



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

May 19, 1998

L. VAN STILLMAN, ESQ.
301 YAMATO ROAD, STE. 1200
BOCA RATON, FL 33431

SUBJECT: ACCESS POWER, INC.
Ref. Number: P96000083992

RECEIVED
98 MAY 22 AM 10:56
DIVISION OF CORPORATIONS

We have received your document for ACCESS POWER, INC. and your check(s) totaling \$87.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

If an amendment was approved by the shareholders, the date of adoption of the amendment and one of the following statements must be contained in the document:

- (1) A statement that the number of votes cast for the amendment by the shareholders was sufficient for approval.
- (2) If more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required must be contained in the document.

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

If you have any questions concerning the filing of your document, please call (850) 487-6909. ←

Velma Shepard
Corporate Specialist

Letter Number: 098A00027793

**ARTICLES OF AMENDMENT
OF
ACCESS POWER, INC.
DESIGNATING SERIES A PREFERRED STOCK**

FILED
98 MAY 22 AM 8:49
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Glenn Smith, certifies that he is the President and a Director ACCESS POWER, INC., a Florida corporation (hereinafter referred to as the "Corporation" or the "Company"); that the Board of Directors of the Corporation adopted the following amendments to the Articles of Incorporation:

FIRST: That at a meeting of the Board of Directors of ACCESS POWER, INC., on May 7th, 1998 a resolution was duly adopted by the Board of Directors, without shareholder approval, as provided for in Article III of the Articles of Amendment to the Articles of Incorporation of Access Power, Inc. adopted May 23, 1997, setting forth a proposed amendment to the Articles of Incorporation and declaring said amendment to be advisable. The resolution setting forth the proposed amendment is as follows:

The following is hereby appended to the end of Article III of the Articles of Incorporation.

1. Creation of Series A Convertible Preferred Stock. There is hereby created a series of preferred stock consisting of 1,000 shares and designated as the Series A Convertible Preferred Stock, having the voting powers, preferences, relative, participating, optional and other special rights and the qualifications, limitations and restrictions thereof that are set forth below.

2. Dividend Provisions. The holders of shares of Series A Convertible Preferred Stocks shall be entitled to receive, when and as declared by the Board of Directors out of any funds at the time legally available therefor dividends at a par with the holders of Common Stock as if the Series A Convertible Preferred Stock had been converted into Common Stock on the record date for the payment of the dividend. Dividends shall be waived with respect to any series of Series A convertible Preferred Stock which are converted prior to any dividend payment date. Each share of Series A Convertible Preferred Stock shall rank on a parity with each other share of Series A Convertible Preferred Stock with respect to dividends.

3. Redemption Provisions. Each share of the Series A convertible Preferred Stock is redeemable, at the option of the Company, upon the terms and conditions set forth herein, prior to the day the registration statement to be filed by the Company becomes effective. On the day the registration becomes effective, all rights of the Company to a redemption of said shares shall be waived, as of 5 P.M. on the previous day, and any notice of redemption after said time shall be null and void. If notice of redemption is received prior to the time which said right expires, said shares shall be redeemable in the following manner at a price of One Thousand Five Hundred (\$1,500.00) Dollars per share (the "Redemption Price"). The Corporation shall have the right to redeem each Share within twenty-four (24) hours after the Notice of Conversion (as defined in Section 5(a)) is

given by a Holder with respect to such Shares. The Corporation shall effect such redemption by payment to the Holder by wire transfer or certified check payable to Holder on or before the Redemption Date, which shall be the later of (i) the fifth (5th) calendar day after Notice of Conversion or (ii) the date on which the Holder had delivered the certificates representing the Preferred Shares proposed to be converted pursuant to Section 5(a)(1). In the event the Corporation shall not make such payment it shall be deemed to have waived its right to redemption as to those Shares. The Corporation shall have the right to redeem less than all of the Shares which are subject to the Notice of Conversion.

4. Liquidation Provisions. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the Series A Convertible Preferred Stock shall be entitled to receive an amount equal to One Thousand Five Hundred (\$1,500.00) Dollars per share. After the full preferential liquidation amount has been paid to, or determined and set apart for, all other series of Preferred Stock hereafter authorized and issued, if any, the remaining assets of the Corporation available for distribution to shareholders shall be distributed ratably to the holders of the common stock. In the event the assets of the Corporation available for distribution to its shareholders are insufficient to pay the full preferential liquidation amount per share required to be paid the Corporation's Series A Convertible Preferred Stock, the entire amount of assets of the Corporation available for distribution to shareholders shall be paid up to their respective full liquidation amounts first to the Series A Convertible Preferred Stock, then to any other series of Preferred Stock hereafter authorized and issued, all of which amounts shall be distributed ratably among holders of each such series of Preferred Stock, and the common stock shall receive nothing. A reorganization or any other consolidation or merger of the Corporation with or into any other corporation, or any other sale of all substantially all of the assets of the Corporation, shall not be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 4, and the Series A Convertible Preferred Stock shall be entitled only to (i) the right provided in any agreement or plan governing the reorganization or other consolidation, merger or sale of assets transaction, (ii) the rights contained in the Florida Corporation Law and (iii) the rights contained in other Sections hereof.

5. Conversion Provisions. The holders of shares of Series A Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert.

(1) Each share of Series A Convertible Preferred Stock (the "Preferred Shares") shall be convertible, at the option of its holder pursuant to the terms set forth herein, into a number of shares of common stock of the Company at the initial conversion rate (the "Conversion Rate") defined below.

The initial Conversion Rate, subject to the adjustments described below, shall be a number of shares of common stock (rounded to the nearest whole number equal to \$1,000 divided by the lower of (i) Sixty-five (65%) of the average Market Price of the common stock for the five trading days immediately prior to the Conversion

Date (defined below) or (ii) 75% of closing bid price on the day of first disbursement from escrow, increased proportionately for any reverse stock split and decreased proportionately for any forward stock split or stock dividend. For purposes of this Section 5(a)(1), Market Price shall be the closing bid price of the common stock on the Conversion Date, as reported by the National Association of Securities Dealers Automated Quotation System (NASDAQ) or the closing bid price on the over the counter market if other than NASDAQ, averaged over the five trading days prior to the date of conversion.

The Holder shall notify the Corporation, by facsimile notice to the Corporation at (904) 273-6309, copy by overnight courier to Access Power, Inc., 10033 Sawgrass Drive West, Suite 100, Ponte Vedra, Florida 32004 of the Holder's intent to convert (the "Notice of Conversion") in the form set forth in Section 5(a)(3) hereof, executed by the holder of the Preferred Share(s) or a specified portion (as above provided) hereof, and accompanied, if required by the Company, by proper assignment hereof in blank. Such conversion shall be effectuated by surrendering the Preferred Shares to be converted (with a copy, by facsimile or courier, to the Company) to the Company's registrar and transfer agent, Atlas Stock Transfer Company, 5899 S. State Street, Salt Lake City, Utah 84017 ("Transfer Agent"). The date on which notice of conversion (the "Conversion Date") is given shall be the date on which the holder has delivered to the Company, by facsimile or hand delivery, of the Notice of Conversion duly executed to the Company. The Company shall cause the Transfer Agent to complete the issuance and delivery of Common Shares within five (5) calendar days of receipt of such conversion form, provided that the Company or its agent has received the Series A Convertible Preferred Stock certificates which are the subject of the conversion on or prior to such fifth calendar day.

(2) No less than 25 (or multiple thereof) shares of Series A Convertible Preferred Stock may be converted at any one time. No fractional shares of common stock shall be issued upon conversion of the Series A Convertible Preferred Stock, in lieu of fractional shares, the number of shares issuable will be rounded to the nearest whole share.

(3) Upon receipt of a Notice of Conversion, the Corporation shall absolutely and unconditionally be obligated to cause a certificate or certificates representing the number of shares of Common Stock to which the converting holder or Preferred Shares shall be entitled as provided herein, which shares shall constitute fully paid and nonassessable shares of Common Stock to be issued to, delivered by overnight courier to, and received by such holder by the fifth (5th) calendar day following the Conversion Date, unless the company has duly redeemed the Preferred Shares which are the subject of the Notice of Conversion in accordance with Section 3 hereof. Such delivery shall be made at such address as a holder may designate thereof in its Notice of Conversion or in its written instructions submitted together therewith. In the event

the Company fails to deliver the shares of Common Stock in accordance with the terms and conditions set forth herein, the Company shall be liable for the payment of a penalty and shall be unconditionally obligated to pay the Converting Shareholder(s) an additional monetary penalty of \$200.00 per \$10,000 converted per day after five (5) days should the converted shares not be delivered to the Converting Shareholder(s), as provided for in Section

(4) The form of conversion Certificate shall read substantially as follows:

The undersigned holder (the "Holder") is surrendering to Access Power, Inc., a Florida corporation (The "Company"), one or more certificates representing shares of Series A Convertible Preferred Stock of the Company (the "Preferred Stock") in connection with the conversion of all or a portion of the Preferred Stock into shares of Common Stock, \$.001 par value per share, of the Company (the "Common Stock") as set forth below.

1. The Holder understands that the Preferred Stock was issued by the Company pursuant to the exemption from registration under the United States Securities Act of 1933, as amended (the "Securities Act"), provided by Regulation D promulgated thereunder.

2. The Holder represents and warrants that all offers and sales of the Common Stock issued to the Holder upon such conversion of the Preferred Stock shall be made (a) pursuant to an effective registration statement under the Securities Act, (b) in compliance with Rule 144, or (c) pursuant to some other exemption from registration.

Number of Shares of Preferred Stock being converted: _____

Applicable Conversion Price: _____

Number of Shares of Common Stock Issuable: _____

Date of conversion: _____

Delivery Instructions for certificates of Common Stock and for new certificates representing any remaining shares of Preferred Stock:

NAME OF HOLDER:

(Signature of Holder)

(b) **Adjustments to Conversion Rate.**

(1) **Reclassification, Exchange and Substitution.** If the common stock issuable on conversion of the Series A Convertible Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification, reverse stock split or forward stock split or stock dividend or otherwise (other than a subdivision or combination of shares provided for above), the holders of the Series A Convertible Preferred Stock shall, upon its conversion, be entitled to receive, in lieu of the common stock which the holders would have become entitled to receive but for such change, a number of shares of such other class or classes of stock that would have been subject to receipt by the holders if they had exercised their rights of conversion of the Series A Convertible Preferred Stock immediately before that change.

(2) **Reorganizations, Mergers, Consolidations or Sale of Assets.** If at any time there shall be a capital reorganization of the Corporation's common stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section (b) or merger of the Corporation into another corporation, or the sale of the Corporation's properties and assets as, an entirety to any other person), then, as a part of such reorganization, merger or sale, lawful provision shall be made so that the holders of the Series A Convertible Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Convertible Preferred Stock, the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such merger, to which holders of the common stock deliverable upon conversion of the Series A Convertible Preferred Stock would have been entitled on such capital reorganization, merger or sale if the Series A Convertible Preferred Stock had been converted immediately before that capital reorganization, merger or sale to the end that the provisions of this paragraph (b)(3) (including adjustment of the Conversion Rate then in effect and number of shares purchasable upon conversion of the Series A Convertible Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(3) In the event (a) the Company does not file a registration statement under the Securities Act of 1933 covering the Common Stock issuable upon conversion of the Series A Convertible Preferred Stock within 30 days of the closing. (the "Closing Date"), (b) the registration statement is not declared effective within

120 days of the Closing Date or (c) the Company does not issue the Common Shares within the time limits set forth in the penultimate sentence of Section 5(a)(1), Conversion Rate shall be adjusted to increase the number of shares of common stock assessable by 5%. The foregoing adjustments are cumulative and not exclusive.

(c) **No Impairment.** The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, merger, dissolution, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provision of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Convertible Preferred Stock against impairment.

(d) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Rate for any shares of Series A Convertible Preferred Stock, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Convertible Preferred Stock effected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Convertible Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Rate at the time in effect, and (iii) the number of common stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Series A Convertible Preferred Stock.

(e) **Notices of Record Date.** In the event of the establishment by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, the Corporation shall mail to each holder of Series A Preferred Stock at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution and the amount and character of such dividend or distribution.

(f) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of common stock solely for the purpose of effecting the conversion of the shares of the Series A Convertible Preferred Stock such number of its shares of common stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock; and if at any time the number

of authorized but unissued shares of common stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of common stock to such number of shares as shall be sufficient for such purpose.

(g) **Notices.** Any notices required by the provisions of this Paragraph (e) to be given to the holders of shares of Series A Convertible Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at its address appearing on the books of the Corporation.

In witness whereof, the undersigned President and Director of this corporation has executed these articles of amendment on May 21, 1998.



Glenn Smith, Chairman

EXHIBIT I

CERTIFICATE OF CONVERSION

The undersigned holder (the "Holder") is surrendering to Access Power, Inc., a Florida corporation (The "Company"), one or more certificates representing shares of Series A Convertible Preferred Stock of the Company (the "Preferred Stock") in connection with the conversion of all or a portion of the Preferred Stock into shares of Common Stock, \$.001 par value per share, of the Company (the "Common Stock") as set forth below.

1. The Holder understands that the Preferred Stock was issued by the Company pursuant to the exemption from registration under the United States Securities Act of 1933, as amended (the "Securities Act"), provided by Regulation D promulgated thereunder.

2. The Holder represents and warrants that all offers and sales of the Common Stock issued to the Holder upon such conversion of the Preferred Stock shall be made (a) pursuant to an effective registration statement under the Securities Act, (b) in compliance with Rule 144, or (c) pursuant to some other exemption from registration.

Number of Shares of Preferred Stock being converted: _____

Applicable Conversion Price: _____

Number of Shares of Common Stock Issuable: _____

Date of conversion: _____

Delivery Instructions for certificates of Common Stock and for new certificates representing any remaining shares of Preferred Stock:

NAME OF HOLDER:

(Signature of Holder)