



P99000063124

FILED
NOV 16 PM 12:24
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ACCOUNT NO. : 072100000032

REFERENCE : 479792 4351650

AUTHORIZATION :

Patricia Pizuto

COST LIMIT : \$ 43.75

ORDER DATE : November 12, 1999

ORDER TIME : 10:48 AM

ORDER NO. : 479792-005

CUSTOMER NO: 4351650

CUSTOMER: Ms. Ruti L. Aloni
Leboeuf Lamb Greene & Macrae
Suite 2800
50 North Laura Street
Jacksonville, FL 32202-3650

*Amended &
Restated
800003042548--4
Articles*

DOMESTIC AMENDMENT FILING

NAME: NETBYTEL.COM, INC.

EFFECTIVE DATE:

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: Janine Lazzarini

EXAMINER'S INITIALS:

RECEIVED
99 NOV 12 PM 11:29
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

*ADR
11/17/99*

**02250, 00705, 00672*



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

November 12, 1999

CSC
1201 Hays Street
Tallahassee, FL 32301

SUBJECT: NETBYTEL.COM, INC.
Ref. Number: P99000063124

RESUBMIT

Please give original
submission date as file date.

We have received your document for NETBYTEL.COM, 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:

Your document is being returned as requested.

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

Annette Ramsey
Corporate Specialist

Letter Number: 299A00054590

*please file today,
as of 11-16-99*

RECEIVED
99 NOV 16 PM 2 37
FLORIDA DEPARTMENT OF STATE
CORPORATION DIVISION
1111 COMMERCIAL BLVD
TALLAHASSEE, FL 32301

ARTICLES OF AMENDMENT AND RESTATEMENT
OF THE
ARTICLES OF INCORPORATION OF
NETBYTEL.COM, INC.

99 NOV 16 PM 12:24
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

1. The name of this Corporation is NetByTel.com, Inc.
2. The Articles of Incorporation are amended and restated in their entirety as set forth in Exhibit A (the "Restated Articles") attached hereto.
3. The foregoing amendment which established the terms of the Corporation's Series A Preferred Shares and Series B Preferred Shares were approved by the Board of Directors and recommended to the Corporation's shareholders in accordance with the provisions of Section 607.1007, Florida Business Corporation Act.
4. The Restated Articles were approved by the holders of a majority of the Corporation's common stock, which is the only group of the Corporation's shareholders entitled to vote on the Restated Articles, and the number of votes in favor of the Restated Articles was sufficient for approval. on November 12, 1999.
5. The amendments and restatement to the Restated Articles are deemed adopted as of their filing with the Florida Department of State.

IN WITNESS WHEREOF, the undersigned officer of the Corporation has hereunto set his hand this 12th day of November, 1999.

NETBYTEL.COM, INC.

By: 

Neal A. Bernstein
Chief Executive Officer

AMENDED AND RESTATED
ARTICLES OF INCORPORATION

NETBYTEL.COM, INC.

ARTICLE I

Name

The name of the Corporation is NetByTel.com, Inc.

ARTICLE II

Principal Office

The principal office and mailing address of this Corporation is 6287 Via Palladium, Boca Raton, Florida 33433.

ARTICLE III

Purpose

The Corporation is organized for the purpose of transacting any or all lawful business.

ARTICLE IV

Capital Stock

A. Classes of Stock. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that this Corporation is authorized to issue is sixty million (60,000,000) shares. Fifty million (50,000,000) shares shall be Common Stock and ten million (10,000,000) shares shall be Preferred Stock, each with a par value of \$0.001 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by these Amended and Restated Articles of Incorporation may be issued from time to time in one or more series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, which series shall consist of 6,333,333 shares (the "Series A Preferred Stock"), and the Series B Preferred Stock, which series shall consist of 3,166,667 shares (the "Series B Preferred Stock"), are as set forth below in this Article IV(B). The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights that have been or may be granted to the Preferred Stock or series thereof in Certificates of

Designation or this Corporation's Articles of Incorporation ("Protective Provisions"), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than the Series A Preferred Stock and Series B Preferred Stock), prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

1. *Dividend Provisions.* Subject to the rights of any series of Preferred Stock that may from time to time come into existence, the holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this Corporation) on the Common Stock of this Corporation, at the rate of \$0.24 per share per annum for the Series A Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like) or, if greater (as determined on a per annum basis and on an as converted basis for the Series A Preferred Stock), an amount equal to that paid on any outstanding shares of this Corporation other than the Series A Preferred Stock, payable when, as, and if declared by the Board of Directors. Such dividends shall be cumulative. The holders of the outstanding Series A Preferred Stock may waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least a majority of the Series A Preferred Stock then outstanding acting together as a single class. The holders of shares of Series B Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, pari passu with the holders of the Common Stock of this Corporation, which dividends shall be payable when, as, and if declared by the Board of Directors.

2. *Liquidation Preference.*

(a) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of (i) \$1.20 for each outstanding share of Series A Preferred Stock (as adjusted for any stock splits, stock

dividends, recapitalizations or the like (the "Original Series A Issue Price")) or \$2.40 for each outstanding share of Series B Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like (the "Original Series B Issue Price")) and (ii) an amount equal to any accrued but unpaid dividends on such share. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under subsection (a).

(b) Upon completion of the distribution required by subsections (a) and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, all of the remaining assets of this Corporation available for distribution to shareholders shall be distributed among the holders of Common Stock pro rata based on the number of shares of Common Stock held by each.

(c) (i) Unless the holders of at least a majority of the Series A Preferred Stock and Series B Preferred Stock then outstanding shall determine otherwise, and subject to the rights of series of Preferred Stock that may from time to time come into existence, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, an amount per share equal to the sum of (A) the Original Series A Issue Price for each outstanding share of Series A Preferred Stock or the Original Series B Issue Price for each outstanding share of Series B Preferred Stock and (B) an amount equal to any accrued but unpaid dividends on such shares upon either: (x) the acquisition of this Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this Corporation; except, that, the initial sale of the Series A Preferred Stock shall not be deemed to be a liquidation, dissolution or winding up of this Corporation pursuant to this paragraph; or (y) a sale of all or substantially all of the assets of this Corporation. If upon the occurrence of either event, the assets and funds thus distributed among the holders of the Series A Preferred Stock and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of this Corporation legally available for distribution shall be distributed ratably among the

holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(ii) In the event the requirements of Section 2 are not complied with, this Corporation shall forthwith either:

A) cause such closing to be postponed until such time as the requirements of Section 2(c) and Section 2(d) have been complied with; or

B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock and Series B 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 2(c)(iii).

(iii) This Corporation shall give each holder of record of Series A Preferred Stock and Series B Preferred Stock written notice of any impending transaction described in Section 2(c) not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction, 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 this 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 this Corporation has given the first notice provided for herein or sooner than ten (10) days after this Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series A Preferred Stock and Series B Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series A Preferred Stock and Series B Preferred Stock.

(d) For purposes of this Section 2, any securities shall be valued as follows:

(i) Securities not covered by B) below:

A) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or

system over the thirty (30) day period ending three (3) days prior to the closing;

B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

C) If there is no active public market, the value shall be the fair market value thereof, as determined unanimously by the Board of Directors of this Corporation.

(ii) The method of valuation of securities not registered under the federal securities laws or that are subject to transfer restrictions (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined unanimously by the Board of Directors of this Corporation.

3. *Redemption.* The Preferred Stock is not redeemable.

4. *Conversion.* The holders of the Series A Preferred Stock and Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) *Right to Convert.*

(i) Each share of Series A Preferred Stock shall be convertible in whole or in part, at the option of the holder thereof, at any time and from time to time after the date of issuance of such share, at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Issue Price by the conversion price for the Series A Preferred Stock (the "Series A Conversion Price") per share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series A Conversion Price shall be the Original Series A Issue Price; provided, however, that the Series A Conversion Price shall be subject to adjustment as set forth in subsection 4(d).

(ii) Each share of Series B Preferred Stock shall be convertible in whole or in part, at the option of the holder thereof, at any time and from time to time after the date of issuance of such share, at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series B Issue Price by the

conversion price for the Series B Preferred Stock (the "Series B Conversion Price" and, together with the Series A Conversion Price, the "Conversion Price") per share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series B Conversion Price shall be the Original Series B Issue Price; provided, however, that the Series B Conversion Price shall be subject to adjustment as set forth in subsection 4(d).

(b) *Automatic Conversion.* Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price immediately upon the earlier of (i) this Corporation's sale of its Common Stock in a public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended, the net proceeds (after deduction of underwriter's commissions and expenses) to this Corporation from which equal or exceed \$20,000,000, and the per share offering price of which is based on a pre-offering valuation of this Corporation of at least \$60,000,000, or (ii) the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Series A Preferred Stock and Series B Preferred Stock.

(c) *Mechanics of Conversion.* Before any holder of Series A Preferred Stock or Series B Preferred Stock shall be entitled to convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of this Corporation or of any transfer agent for the Series A Preferred Stock or Series B Preferred Stock, respectively, and shall give written notice to this Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock or Series B Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock or Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering Series A Preferred Stock or Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Series A Preferred

Stock or Series B Preferred Stock shall not be deemed to have converted such Series A Preferred Stock or Series B Preferred Stock until immediately prior to the closing of such sale of securities.

(d) *Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.* The Series A Conversion Price and Series B Conversion Price shall be subject to adjustment from time to time as follows:

(i) A) 1) If this Corporation shall issue any Additional Stock (as defined below), the Series A Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price equal to the quotient obtained by dividing the total computed under clause (a) below by the total computed under clause (b) below as follows:

a) an amount equal to the sum of:

i) the aggregate purchase price of the shares of Series A Preferred Stock sold pursuant to the Series A Preferred Stock Purchase Agreement (whether at the initial or subsequent closings) dated as of the Original Series A Issue Date between this Corporation and the investors set forth therein (the "Series A Preferred Stock Purchase Agreement"), plus

ii) the aggregate purchase price of the shares of Series A Preferred Stock issuable upon exercise or conversion of those certain warrants to purchase Series A Preferred Stock (the "Series A Warrants"), which were issued pursuant to the Series A Preferred Stock Purchase Agreement, plus

iii) the aggregate consideration, if any, received by the Corporation for all Additional Stock issued on or after the date of the Series A Preferred Stock Purchase Agreement (the "Purchase Date");

b) an amount equal to the sum of:

i) the aggregate purchase price of the shares of Series A Preferred Stock

sold pursuant to the Series A Preferred Stock Purchase Agreement divided by the Series A Conversion Price in effect at the Purchase Date (or such higher or lower Series A Conversion Price as results from the application of subsections 4(d) (iii) and (iv) and assuming that this Amended and Restated Articles of Incorporation was in effect as of the Purchase Date), plus

ii) the aggregate purchase price of the shares of Series A Preferred Stock issuable upon exercise or conversion of the Series A Warrants, divided by the Series A Conversion Price in effect at the Purchase Date (or such higher or lower Series A Conversion Price as results from the application of subsections 4(d)(iii) and (iv) and assuming that this Amended and Restated Articles of Incorporation was in effect as of the Purchase Date), plus

iii) the number of shares of Additional Stock issued since the Purchase Date (increased or decreased to the extent that the number of such shares of Additional Stock shall have been increased or decreased as the result of the application of subsections 4(d) (iii) and (iv)).

2) If this Corporation shall issue any Additional Stock (as defined below), the Series B Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price equal to the quotient obtained by dividing the total computed under clause (a) below by the total computed under clause (b) below as follows:

a) an amount equal to the sum of:

i) the aggregate purchase price of the shares of Series B Preferred Stock issuable upon exercise or conversion of those certain warrants to purchase Series B

Preferred Stock (the "Series B Warrants"), which were issued pursuant to the Series A Preferred Stock Purchase Agreement, plus

ii) the aggregate consideration, if any, received by the Corporation for all Additional Stock issued on or after the Purchase Date;

b) an amount equal to the sum of:

i) the aggregate purchase price of the shares of Series B Preferred Stock issuable upon exercise or conversion of the Series B Warrants, divided by the Series B Conversion Price in effect at the Purchase Date (or such higher or lower Series B Conversion Price as results from the application of subsections 4(d) (iii) and (iv) and assuming that this Amended and Restated Articles of Incorporation was in effect as of the Purchase Date), plus

ii) the number of shares of Additional Stock issued since the Purchase Date (increased or decreased to the extent that the number of such shares of Additional Stock shall have been increased or decreased as the result of the application of subsections 4(d) (iii) and (iv)).

B) No adjustment of the applicable Conversion Price shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4), no adjustment of such applicable Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the applicable Conversion Price above the applicable Conversion Price in effect immediately prior to such adjustment.

C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

E) In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(d)(i) and subsection 4(d)(ii):

1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)), if any, received by this Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for

such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)).

3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), the applicable Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the applicable Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock

outstanding for purposes of subsection 4(d)(i)(A)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this Corporation after the date of filing of these Amended and Restated Articles of Incorporation other than:

A) Common Stock issued pursuant to a transaction described in subsection 4(d)(iii) hereof;

B) Shares of Common Stock issuable or issued to employees, consultants, directors or vendors (if in transactions with primarily non-financing purposes) of this Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of this Corporation;

C) Common Stock issued upon the conversion of the Series A Preferred Stock or Series B Preferred Stock; or

D) Common Stock issued upon conversion or exercise of the Series A Warrants or the Series B Warrants.

(iii) In the event this Corporation should at any time or from time to time after the date of filing of these Amended and Restated Articles of Incorporation fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the

additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the applicable Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the date of filing of these Amended and Restated Articles of Incorporation is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the applicable Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) *Other Distributions.* In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case for the purpose of this subsection 4(e), the holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this Corporation into which their shares of Series A Preferred Stock and Series B Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this Corporation entitled to receive such distribution.

(f) *Recapitalizations.* If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A Preferred Stock and Series B Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock and Series B Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A Preferred Stock and Series B Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion

Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock and Series B Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) *No Impairment.* This Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities 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 this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 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 Preferred Stock and Series B Preferred Stock against impairment.

(h) *No Fractional Shares and Certificate as to Adjustments.*

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock or Series B Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock or Series B Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price or Series B Conversion Price pursuant to this Section 4, this 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 Preferred Stock or Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock or Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the applicable Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A Preferred Stock or Series B Preferred Stock, as the case may be.

(i) *Notices of Record Date.* In the event of any taking by this 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, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series A Preferred Stock or Series B 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, distribution or right, and the amount and character of such dividend, distribution or right.

(j) *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 the Series A Preferred Stock and Series B Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock and Series B 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 Series A Preferred Stock and Series B Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Amended and Restated Articles of Incorporation.

(k) *Notices.* Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock and Series B Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this Corporation.

5. *Voting Rights.*

(a) *General Voting Rights.* The holder of each share of Series A Preferred Stock and Series B Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A Preferred Stock or Series B Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of this Corporation, and shall be entitled to vote,

together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock or Series B Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) *Voting for the Election of Directors.*

(i) As long as outstanding shares of Series A Preferred Stock and Series B Preferred Stock (as adjusted for stock splits, combinations and the like), collectively total at least 10% of the total outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock and any other equity security with voting rights and powers equal to the voting rights and powers of Common Stock, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to collectively elect two (2) directors of this Corporation at each annual election of directors.

(ii) As long as outstanding shares of Series A Preferred Stock and Series B Preferred Stock (as adjusted for stock splits, combinations and the like), collectively total at least 5% but less than 10% of the total outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock and any other equity security with voting rights and powers equal to the voting rights and powers of Common Stock, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to collectively elect one (1) director of this Corporation at each annual election of directors.

(iii) In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to this Section 5(b), the remaining director so elected by that class or series (or if there is no such director remaining, the holders of a majority of the shares of that class or series by the affirmative vote thereof), may elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class or series of stock or by any director so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such shareholders called for that purpose or pursuant to a written consent of

shareholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

6. *Protective Provisions.*

(a) Subject to the rights of series of Preferred Stock that may from time to time come into existence, so long as any shares of Series A Preferred Stock or Series B Preferred Stock are outstanding, this Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock and Series B Preferred Stock acting together as a single class:

(i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock or Series B Preferred Stock so as to affect adversely the shares;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock;

(iii) authorize or issue, or obligate itself to issue, any equity security, including any other security convertible into or exercisable for such equity security that has a preference over, or being on a parity with, the Series A Preferred Stock or Series B Preferred Stock with respect to dividends, liquidation, redemption or voting; or

(iv) amend Article IV(B) or Article VI of this Corporation's Articles of Incorporation or Section 1.3 of this Corporation's bylaws.

(b) Subject to the rights of series of Preferred Stock that may from time to time come into existence, so long as any shares of Series A Preferred Stock or Series B Preferred Stock are outstanding but collectively are equivalent to less than fifteen percent (15%) of the aggregate of the outstanding shares of Common Stock and Series A Preferred Stock, Series B Preferred Stock and any other equity security with voting rights and powers equal to the voting rights and powers of Common Stock, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock acting together as a single class:

(i) sell, convey, or otherwise dispose of all or substantially all of the Corporation's property or business or merge into or consolidate with any other corporation or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of

the Corporation is disposed of or effect any reorganization or recapitalization of this corporation;

(ii) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to (a) the repurchase of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost or at cost upon the occurrence of certain events, such as the termination of employment; or (b) obligations to repurchase Common Stock that existed prior to November 12, 1999.

(iii) declare or pay any dividends on the capital stock of the Corporation.

7. *Status of Converted Stock.* In the event any shares of Series A Preferred Stock or Series B Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled and shall not be issuable by this Corporation. The Amended and Restated Articles of Incorporation of this Corporation shall be appropriately amended to effect the corresponding reduction in this Corporation's authorized capital stock.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C).

1. *Dividend Rights.* Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. *Liquidation Rights.* Upon the liquidation, dissolution or winding up of this Corporation, the assets of this Corporation shall be distributed as provided in Section 2 (B) of Article IV hereof.

3. *Redemption.* The Common Stock is not redeemable.

4. *Voting Rights.* The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V
Indemnification

A. Limitation of Liability. To the full extent that the Florida Business Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of the liability of directors or officers, a director or officer of this Corporation shall not be liable to this Corporation or its shareholders for any monetary damages.

B. Indemnification.

1. This Corporation shall indemnify a director or officer of this Corporation who is or was a party to any proceeding by reason of the fact that he or she is or was such a director or officer or is or was serving at the request of this Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other profit or non-profit enterprise against all liabilities and expenses incurred in the proceeding except such liabilities and expenses as are incurred because of his or her willful misconduct or knowing violation of the criminal law. Unless a determination has been made that indemnification is not permissible, this Corporation shall make advances and reimbursements for expenses incurred by a director or officer in a proceeding upon receipt of an undertaking from him or her to repay the same if it is ultimately determined that he or she is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the director or officer and shall be accepted without reference to his or her ability to make repayment. The Board of Directors is hereby empowered, by majority vote of a quorum of disinterested directors, to contract in advance to indemnify and advance the expenses of any director or officer.

(2) The Board of Directors is hereby empowered, by majority vote of a quorum of disinterested directors, to cause this Corporation to indemnify or contract in advance to indemnify any person not specified in Article V(B)(1) who was or is a party to any proceeding, by reason of the fact that he or she is or was an employee or agent of this Corporation, or is or was serving at the request of this Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other profit or non-profit enterprise, to the same extent as if such person were specified as one to whom indemnification is granted in Article V(B)(1).

C. Insurance. This Corporation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability assumed by it in accordance with this Article and may also procure insurance, in such amounts as the Board of Directors may determine, on behalf of any person who is or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against or incurred by such person in any such capacity or arising from his or her status as such, whether or not this Corporation would have power to indemnify him or her against such liability under the provisions of this Article V.

D. Change in Board of Directors. In the event there has been a change in the composition of a majority of the Board of Directors after the date of the alleged act or omission with respect to which indemnification is claimed, any determination as to indemnification and advancement of expenses with respect to any claim for indemnification made pursuant to Article V(B)(1) shall be made by special legal counsel agreed upon by the Board of Directors and the proposed indemnitee. If the Board of Directors and the proposed indemnitee are unable to agree upon such special legal counsel, the Board of Directors and the proposed indemnitee each shall select a nominee, and the nominees shall select such special legal counsel.

E. Application. The provisions of this Article V shall be applicable to all actions, claims, suits or proceedings commenced after the adoption hereof, whether arising from any action taken or failure to act before or after such adoption. No amendment, modification or repeal of this Article shall diminish the rights provided hereby or diminish the right to indemnification with respect to any claim, issue or matter in any then pending or subsequent proceeding that is based in any material respect on any alleged action or failure to act prior to such amendment, modification or repeal.

F. Covered Persons. Reference herein to directors, officers, employees or agents shall include former directors, officers, employees and agents and their respective heirs, executors and administrators.

G. Amendment. Notwithstanding any other provisions of the Articles of Incorporation or the Bylaws of this Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, the Articles of Incorporation or the Bylaws of this Corporation), the provisions of this Article may be altered, amended or repealed only by the affirmative vote of 75% or more of the voting power of all the then outstanding shares of this Corporation's capital stock entitled to vote on the election of directors, voting together as a single class.

ARTICLE VI Board of Directors

The business of the Corporation shall be managed by its Board of Directors. The Board of Directors shall consist of no more than 25 persons as determined by the Board of Directors from time to time. However, as long as outstanding shares of Series A Preferred Stock and Series B Preferred Stock (as adjusted for stock splits, combinations and the like), collectively total at least 15% of the total outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock and any other equity security with voting rights and powers equal to the voting rights and powers of Common Stock, the Board of Directors shall consist of no more than 5 persons unless otherwise determined by the Board of Directors. In addition, as long as outstanding shares of Series A Preferred Stock and Series B Preferred Stock (as adjusted for stock splits, combinations and the like), collectively total at least 5% but less than 15% of the total outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock and any other equity security with voting rights and powers equal to

the voting rights and powers of Common Stock, the Board of Directors shall consist of 6 persons unless otherwise determined by the Board of Directors prior to the number of outstanding shares of Series A Preferred Stock and Series B Preferred Stock (as adjusted for stock splits, combinations and the like) collectively totalling less than 15% of the total outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock and any other equity with voting rights and powers equal to the voting rights and powers of Common Stock. If outstanding shares of Series A Preferred Stock and Series B Preferred Stock (as adjusted for stock splits, combinations and the like), collectively total less than 5% of the total outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock and any other equity security with voting rights and powers equal to the voting rights and powers of Common Stock, the Board of Directors shall consist of any number of members, but no more than 25 members, as determined by the Board of Directors.

ARTICLE VII

Amendment

Except as otherwise provided herein, these Articles of Incorporation may be amended in the manner provided by law. Both the shareholders and the Board of Directors may repeal, amend or adopt Bylaws for the Corporation, pursuant to these Articles, except that the shareholders may prescribe in any Bylaw made by them that such Bylaw shall not be altered, repealed or amended by the Board of Directors.

IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Incorporation this 12th day of November, 1999.

NETBYTEL.COM, INC.

By: 

Neal A. Bernstein
Chief Executive Officer

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