

P01000045064

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐

PICK-UP

☐

WAIT

☐

MAIL

(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



100023938731

10/24/03--01036--011 . \*\*35.00

FILED  
03 NOV 17 PM 5:39  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Am + Restated

CRB 1/18



Wachovia Center - Penthouse  
1909 Tyler Street  
Hollywood, FL 33020

Phone: 954.921.6363  
Fax: 954.241.6846  
www.hollywoodcounsel.com

November 11, 2003

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

954-922-3431

**Re: Amended and Restated Article of Incorporation**

Dear Sir or Madam:

Enclosed please find the corrected documents for the filing of our clients Amended Articles of Incorporation. Our clients are very anxious to get these documents filed with your office, therefore if at all possible please fax us a confirmation of the filing of these amended articles to the number above.

Should you have any questions please contact me at the number above.

Thank you in advance for your prompt attention to this matter.

Sincerely,

MARIELLA C. GONZALEZ

Enclosures

RECEIVED

03 NOV 17 AM 9:26

DIVISION OF CORPORATIONS



Wachovia Center - Penthouse  
1909 Tyler Street  
Hollywood, FL 33020

Phone: 954.921.6363  
Fax: 954.241.6846  
[www.hollywoodcounsel.com](http://www.hollywoodcounsel.com)

October 22 2003

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

**Re: Amended and Restated Article of Incorporation**

Dear Sir or Madam:

Enclosed please find a check payable to the Dept. of State in the amount of \$35.00 for the filing of our client, Electrolytic Technologies Corporation's, Amended and Restated Articles of Incorporation. Upon processing please forward a confirmation of filing to our office in the enclosed self addressed stamped envelope provided herewith for your convenience.

Should you have any questions please contact me at the number above.

Sincerely,

MARIELLA C. GONZALEZ

Enclosures



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood  
Secretary of State

October 28, 2003

MARIELLAC GONZALEZ  
WASSERSTROM  
1909 TYLER ST., PENTHOUSE WACHOVIA CTR  
HOLLYWOOD, FL 33020

SUBJECT: ELECTROLYTIC TECHNOLOGIES CORPORATION  
Ref. Number: P01000045064

We have received your document for ELECTROLYTIC TECHNOLOGIES CORPORATION and your check(s) totaling \$35.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

The date of adoption of each amendment must be included in the document.

The document must contain written acceptance by the registered agent, (i.e. "I hereby am familiar with and accept the duties and responsibilities as registered agent for said corporation/limited liability company"); and the registered agent's signature.

PLEASE COMPLETE THE DATES ON THE CERTIFICATE.

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) 245-6880.

Karen Gibson  
Document Specialist

Letter Number: 303A00058724

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF

ELECTROLYTIC TECHNOLOGIES CORPORATION  
(A Florida Corporation)

(original Articles of Incorporation were filed May 4, 2001 and first amended and restated Articles of Incorporation were filed March 11, 2002)

FILED  
03 NOV 17 PM 5:39  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLE 1

NAME

The name of the corporation (the "Corporation") is: **Electrolytic Technologies Corporation.**

ARTICLE 2

PRINCIPAL OFFICE; REGISTERED OFFICE; REGISTERED AGENT

The address of the principal office of the registered office of the Corporation and the mailing address of the Corporation is 19597-G N.E. 10th Avenue, North Miami Beach, FL 33179.

ARTICLE 3

PURPOSE

The general purpose for which the corporation is organized is to transact or engage in any and all lawful business or activity permitted under the Florida Business Corporation Act ("FBCA") and the laws of the State of Florida and the United States.

ARTICLE 4

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 twenty-five million (25,000,000) shares. Twenty million (20,000,000) shares shall be Common Stock and five million (5,000,000) 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 three series of the Preferred Stock (each a "Preferred Stock Series"), specifically, a Series A convertible preferred stock, with two hundred fifty five thousand (255,000) authorized shares (the "Series A Preferred Stock"), and a Series B convertible preferred stock, with one hundred thousand (100,000) authorized shares (the "Series B Preferred Stock"), and a Series C convertible preferred

stock, with two hundred thousand (200,000) authorized shares (the "Series C Preferred Stock") are as set forth below in this Article 4(B).

1. Dividend Provisions.

(a) The holders of shares of the 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 per share per annum for the respective Preferred Stock Series as set forth in subsection (b) of this Section 1, for the 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 Preferred Stock), an amount equal to that paid on any other outstanding shares of this Corporation, payable when, as, and if declared by the Board of Directors. Such dividends, whether or not declared, if not paid shall be cumulative as described in subsection (b) below. The holders of the outstanding Preferred Stock can 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 Preferred Stock of each Preferred Stock Series (voting separately) then outstanding.

(b) (1) The dividend, as described in subsection (a) of this Section 1, for the Series A Preferred Stock shall be at the rate of \$0.2667 per share per annum as of the original issue date.

(2) The dividend, as described in subsection (a) of this Section 1, for the Series B Preferred Stock shall be at the rate of \$0.80 per share per annum as of the original issue date.

(3) The dividend, as described in subsection (a) of this Section 1, for the Series C Preferred Stock shall be at the rate of \$0.80 per share annum as of the original issue date, provided, however, with respect to Series C Preferred Stock with certificates designated 1023-1040, the dividend shall cumulate as of January 15, 2003.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation (a "Liquidation Event"), either voluntary or involuntary, the holders of 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 as follows: (i) first to the holders of the Series A Preferred Stock, pro rata, an amount per share not to exceed the Series A Liquidation Preference (as defined herein), then, if there remains assets of this Corporation for distribution, (ii) to the holders of the Series B Preferred Stock, pro rata, an amount per share not to exceed the Series B Liquidation Preference (as defined below) then, if there remains assets of this Corporation for distribution (iii) to the holders of the Series C Preferred Stock, pro rata, an amount per share not to exceed the Series C Liquidation Preference (as defined below). For the purposes of this subsection (a) of Section 2, the "Series A Liquidation Preference" shall be equal to the sum of (i) the Series A Original Issue Price (as set forth in subsection (d) of this Section 2), plus (ii) declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like). For the purposes of this subsection (a) of Section 2, the "Series B Liquidation Preference" shall be equal to the sum of (i) the Series B Original Issue Price (as set forth in subsection (d) of this Section 2), plus (ii) declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like). For purposes of this subsection (a) of Section 2, the "Series C Liquidation Preference" shall be equal to the sum of (i) the Series C Original Issue Price (as set forth in subsection (d) of the Section 2) plus (ii) declared but unpaid dividends on such share (subjects adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like). If upon the occurrence of a Liquidation Event, the assets and funds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the Preferred Stock in proportion to the amount of such stock owned by each such holder.

(b) Upon the completion of the distribution required by subsection (a) of this Section 2, the remaining assets of this Corporation available for distribution to shareholders shall be distributed among the holders of Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each at the time of the Liquidation Event (assuming full conversion of all such Preferred Stock into Common Stock immediately prior to the Liquidation Event).

(c) (i) For purposes of this Section 2, a Liquidation Event shall be deemed to be occasioned by, or to include (unless the holders of at least a majority of the holders of each Preferred Stock Series (voting separately) then outstanding shall determine otherwise and waive the requirements of this Section 2), (A) 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; or (B) a sale of all or substantially all of the assets of this Corporation.

(ii) In any of such events, if the consideration received by this Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) 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 ten (10) day period ending the day immediately prior to the closing;

(2) 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 ten (10) day period ending the day immediately prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by this Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (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 mutually determined by this Corporation and the holders of at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iii) In the event the requirements of this subsection 2(c) are not complied with, this Corporation shall forthwith either:

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

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the 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)(iv) hereof.

(iv) This Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction 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 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 each Preferred Stock Series (voting separately).

(d) Original Issue Price Based on Preferred Stock Series. As referenced in subsection (a) of this Section 2 and in subsection (a) of Section 4, the "Series A Original Issue Price" for the Series A Preferred Stock shall be \$3.3333, and both the "Series B Original Issue Price" and the "Series C Original Issue Price" shall be \$10.00.

3. Redemption. The Preferred Stock is not redeemable.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any 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 Issue Price (as set forth for each respective Preferred Stock Series in subsection (d) of Section 2) by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for shares of Preferred Stock shall be based on the Original Issue Price for the respective Preferred Stock Series; provided, however, that the Conversion Price for the Preferred Stock shall be subject to adjustment as set forth in subsection 4(d).

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such Preferred Stock immediately upon the earlier of (i) this Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended, the public offering price of which was not less than four times the Series A Liquidation Preference (initially \$13.3333) per share (as adjusted for any stock splits, stock dividends, recapitalizations or the like) and \$10,000,000 in the aggregate or (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of each of the Preferred Stock Series (voting separately).

(c) Mechanics of Conversion. Before any holder of 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 Preferred Stock, 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 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 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, as amended, or a change of control of this Corporation, including a sale of all or substantially all of the assets of this Corporation, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon (i) the closing with the underwriters of the sale of securities pursuant to such offering, or (ii) the closing of such change of control transaction, as applicable, in which event the persons entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities or such change of control transaction, as applicable.

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

(i) (A) If this Corporation shall issue, after the date these Amended and Restated Articles of Incorporation have been filed with the State of Florida (the "Reference Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2) plus the number of shares of Common Stock that the aggregate consideration received by this Corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2) plus the number of shares of such Additional Stock.

(B) No adjustment of the Conversion Price for Preferred Stock 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 Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the 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 Reference 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 Conversion Price of the Preferred Stock, 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 Conversion Price of the Preferred Stock, 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 Reference Date other than:

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

(B) shares of Common Stock (excluding shares repurchased at cost by this Corporation in connection with the termination of service) 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) shares of Common Stock issuable or issued upon exercise of warrants issued to banks or equipment lessors, which warrants were approved by the Board of Directors of this Corporation, provided that the number of shares of Common Stock issuable or issued upon exercise of all such warrants issued in the preceding twelve (12) month period does not exceed two percent (2%) of the then outstanding Common Stock of this Corporation (assuming full conversion and exercise of all convertible and exercisable securities).

(iii) In the event this Corporation should at any time or from time to time after the Reference Date 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 Conversion Price of the Preferred Stock 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.

(iv) If the number of shares of Common Stock outstanding at any time after the Reference Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Preferred Stock 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 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 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 Preferred Stock shall thereafter be entitled to receive upon conversion of the 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 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 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 these Amended and Restated 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 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 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 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 Conversion Price of Preferred Stock 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 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 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the 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 Preferred Stock.

(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 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 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 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, 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 Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, or delivered by a national overnight courier and addressed to each holder of record at his address appearing on the books of this Corporation or e-mailed or faxed to each holder of record at such holder's e-mail address or fax number, with confirmation of transmission.

#### 5. Voting Rights and Board Composition.

(a) General Voting Rights. The holders of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such 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 By-laws 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 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 at least a majority of the shares of each Preferred Stock Series originally issued remain outstanding, the holders of the Preferred Stock shall be entitled to elect two (2) directors of this Corporation at each annual election of directors. The holders of outstanding Common Stock shall be entitled to elect two (2) directors of this Corporation at each annual election of directors. The holders of Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted basis) shall be entitled to elect any remaining directors of this Corporation. No individual may be elected a director representing more than one series or class of shares.

(ii) 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 directors so elected by that class or series may by affirmative vote of a majority thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of a majority of the shares of that class or series), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant; provided however, if it is within 30 days or less from an annual meeting, the vacancy will remain unfilled until such annual meeting and no additional meeting of shareholders and no action by the Board of Directors shall be needed or effective to fill the vacancy. Any director who shall have been elected by the holders of a class or series of stock or by any directors 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 duly 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) So long as any shares of 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, the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, and the holders of at least a majority of the then outstanding Series C Preferred Stock (voting separately as three distinct Preferred Stock Series):

(i) sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of this Corporation is disposed of;

(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 other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the Preferred Stock with respect to dividends, liquidation, redemption or voting;

(iv) declare or pay any dividend on its Common Stock or 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 the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this Corporation or any subsidiary pursuant to agreements under which this Corporation has the option to repurchase such shares at cost or at fair market value upon the occurrence of certain events, such as the termination of employment; or

(v) increase the authorized number of directors of this Corporation to a number greater than seven (7).

(b) Notwithstanding subsection (a) of this Section 6, this Corporation shall not alter or change the rights, preferences or privileges of the shares of any Preferred Stock Series so as to affect adversely such shares 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 the subject Preferred Stock Series.

7. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be re-issuable by this Corporation absent amendment of these Amended and Restated Articles of Incorporation.

8. Recognition of Series A Preferred Stock Split. Prior to the adoption of these Amended and Restated Articles of Incorporation, by the required consent of the Board of Directors and the shareholders of the Corporation, the Corporation effected a stock split of the Series A Preferred Stock whereby each share of the Series A Preferred Stock was replaced with thirty (30) shares of Series A Preferred Stock (the "Stock Split"). These Amended and Restated Articles of Incorporation have incorporated the Stock Split and all adjustments resulting therefrom.

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 4(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 B.2 of this Article 4.

3. 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 By-laws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

## ARTICLE 5

### BOARD OF DIRECTORS

The number of directors of the Corporation shall be fixed from time to time by the By-laws of the Corporation or an amendment thereto duly adopted by the Board of Directors or the Shareholders of the Corporation, and shall be in compliance with Section B.5(b) of Article 4 hereto.

## ARTICLE 6

### LIMITATION ON DIRECTOR LIABILITY

A director shall not be personally liable to the Corporation or the holders of shares of capital stock for monetary damages for breach of fiduciary duty as a director, except (i) for any breach of the duty of loyalty of such director to the Corporation or such holders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 607.0831 of the FBCA, or (iv) for any transaction from which such director derives an improper personal benefit. If the FBCA is hereafter amended to authorize the further or broader elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the FBCA, as so amended. No repeal or modification of this Article 6 shall adversely affect any right of or protection afforded to a director of the Corporation existing immediately prior to such repeal or modification.

## ARTICLE 7

### INDEMNIFICATION

The corporation shall indemnify and may advance expenses to any and all of its directors, officers, employees or agents or former directors, officers, employees or agents or any person or persons who may have served at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise in which it owns shares of stock or of which it is a creditor, to the full extent permitted by law as now or hereafter in effect. Said indemnification shall include, but not be limited to, the expenses, including the cost of any judgments, fines, settlements and counsel's fees, actually and necessarily paid or incurred in connection with any action, suit or proceedings, whether civil, criminal, administrative or investigative, and any appeals thereof, to which any such person or his legal representative may be made a party or may be threatened to be made a party, by reason of his being or having been a director, officer, employee or agent as herein provided. The foregoing right of indemnification shall not be exclusive of any other rights to which any director, officer, employee or agent may be entitled as a matter of law or which he may be lawfully granted. The Corporation may purchase and maintain insurance on behalf of, its officers and directors to the fullest extent permitted by law as now or hereafter in effect.

Without limiting the generality of the foregoing, the By-laws may provide for indemnification and advancement of expenses to officers, directors, employees and agents on such terms and conditions as the Board may from time to time deem appropriate or advisable.

#### **ARTICLE 8**

#### **BY-LAWS**

The Board shall have the power to adopt, amend or repeal the By-laws of the Corporation or any part thereof.

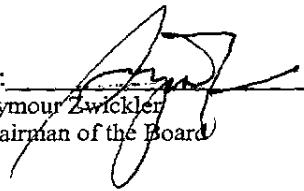
#### **ARTICLE 9**

#### **AMENDMENT**

These Amended and Restated Articles of Incorporation may be altered, amended or repealed by the shareholders of the Corporation in accordance with the applicable provisions of Florida law.

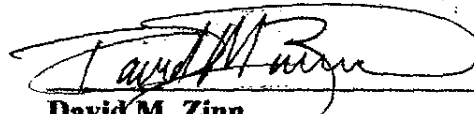
IN WITNESS WHEREOF, the undersigned incorporator has executed these Amended and Restated Articles of Incorporation on October 31, 2003.

#### **Electrolytic Technologies Corporation**

By:   
Seymour Zwickler  
Chairman of the Board

**CONSENT OF REGISTERED AGENT  
OF  
ELECTROLYTIC TECHNOLOGIES CORPORATION**

The undersigned, David M. Zinn, whose business address is 19597 NE 10TH AVE, North Miami Beach, FL 33170, hereby accepts appointment as the registered agent of **Electrolytic Technologies Corporation**, and accepts the obligations provided for in Section 607.0505, Florida Statutes.

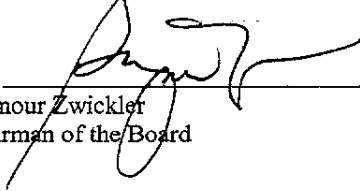
  
**David M. Zinn**  
Registered Agent

**CERTIFICATE TO THE AMENDED AND RESTATED  
ARTICLES OF INCORPORATION OF  
ELECTROLYTIC TECHNOLOGIES CORPORATION**

The undersigned, Edmund M. Cudworth, Chief Operations Officer and Authorized Officer, of ELECTROLYTIC TECHNOLOGIES CORPORATION, a Florida corporation (the "Corporation"), does hereby certify as follows:

1. In accordance with Section 607.1003 of the Florida Statutes, the Board of Directors of the Corporation ratified, approved and recommended by Unanimous Written Consent dated October 31, 2003 the amendment and restatement of the Corporation's Articles of Incorporation as attached hereto.
2. In accordance with Section 607.1003 of the Florida Statutes, the shareholders of the Corporation ratified and approved by written consent in lieu of a special meeting of the Corporation's shareholders dated October 31, 2003, the number of votes cast for the amendment by the shareholders of each voting class being sufficient for such approval, the amendment and restatement of the Corporation's Articles of Incorporation as attached hereto.
2. The undersigned officer of the Corporation has been duly authorized to submit these Amended and Restated Articles of Incorporation of the Corporation to the Department of State of Florida for filing in accordance with Section 607.1007, Florida Statutes.

**ELECTROLYTIC TECHNOLOGIES CORPORATION**

By:   
Seymour Zwickler  
Chairman of the Board