

P0200014925

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H05000275754 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:
Division of Corporations
Fax Number : (850) 205-0380

From:
Account Name : EDWARDS & ANGELL
Account Number : 075410001517
Phone : (561) 833-7700
Fax Number : (561) 655-8719

RECEIVED
05 DEC -1 AM 8:00
DIVISION OF CORPORATIONS

BASIC AMENDMENT
EXPRESS CYCLE SERVICE INC.

Certificate of Status	0
Certified Copy	1
Page Count	20
Estimated Charge	\$43.75

FILED
05 DEC -1 PM 2:19
SECRETARY OF STATE
TALLAHASSEE FLORIDA

Electronic Filing Menu

Corporate Filing

Public Access Help

DEC 01 2005

Amen
Re state

Dec. 1. 2005 9:56AM

No. 1041 P. 2

((H05000275754 3)))

PMD081805
279394.1

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
EXPRESS CYCLE SERVICE INC.**

FILED
05 DEC -1 PM 2:19
SECRETARY OF STATE
TALLAHASSEE FLORIDA

Pursuant to the Florida Business Corporation Act (the "Act"), EXPRESS CYCLE SERVICE INC., a Florida profit corporation (the "Corporation"), certifies that:

1. The amendments set forth herein were duly recommended by the Board of Directors and approved by a majority of the shareholders on September 16, 2005. The number of votes cast for the amendment was sufficient for approval.
2. The original Articles of Incorporation of the Corporation were filed on October 25, 2002, and amended and restated on November 29, 2004 and January 26, 2005.
3. Pursuant to Sections 607.1006 and 607.1007 of the Act, the Articles of Incorporation of the Corporation are hereby amended and restated in their entirety as follows:

ARTICLE I

Name

The name of the corporation (the "Corporation") is Express Cycle Service Inc.

ARTICLE II

Address

The Corporation's principal office is located at, and its mailing address is, 4356 Fortune Place, Suite C, Melbourne, Florida 32904 or at such other place as may be designated from time to time by the Board of Directors.

ARTICLE III

Duration

The Corporation shall have perpetual existence.

((H05000275754 3)))

((H05000275754 3)))

ARTICLE IV

Purpose

The purpose of the Corporation is to engage in any activities or business permitted by the laws of the United States and the State of Florida, as those laws now exist or as they may hereafter provide.

ARTICLE V

CAPITAL SECURITIES

The total number of shares of capital stock that the Corporation shall have authority to issue is Thirteen Million (13,000,000) shares, par value \$0.0001 per share, consisting of two separate classes of capital stock divided and designated as follows: (i) Ten Million (10,000,000) shares of common stock ("Common Stock"); and (ii) Three Million (3,000,000) shares of preferred stock as designated under Section A.1 below.

Except as otherwise restricted by this Articles of Incorporation, the Corporation is authorized to issue from time to time all or any portion of the capital stock of the Corporation that is authorized but not issued to such person or persons and for such lawful consideration as it may deem appropriate, and generally in its absolute discretion to determine the terms and manner of any disposition of such authorized but unissued capital stock.

Any and all such shares issued for which the full consideration has been paid or delivered shall be deemed fully paid shares of capital stock, and the holder of such shares shall not be liable for any further call or assessment or any other payment thereon.

The voting powers, designations, preferences, privileges and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions of each class (and series) of capital stock of the Corporation are as hereafter provided in this Article FIFTH.

A. PREFERRED STOCK

1. Designation of Series. The shares of the Corporation's preferred stock shall be designated as follows:

(a) "Series A Preferred Stock" consisting of Two Hundred Ninety-One Thousand Two Hundred Fifty (291,250) shares,

(b) "Series B Preferred Stock" consisting of Two Million Five Hundred Thousand (2,500,000) shares (collectively, the Series A Preferred Stock and the Series B Preferred Stock are hereinafter the "Preferred Stock"), and

(c) One Hundred Eighty Seven Thousand Five Hundred (208,750) shares of the Corporation's preferred stock shall constitute "Undesignated Preferred Stock". The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set

((H05000275754 3)))

((H05000275754 3)))

forth below.

2. Dividend Provisions.

(a) Series B Preferred Stock Dividends. The holders of shares of Series B Preferred Stock, in preference to the holders of Series A Preferred Stock and Common Stock, shall be entitled to receive, when and if declared by the Board of Directors out of funds legally available for the purpose, dividends as provided in this Section A.2. Dividends on each share of Series B Preferred Stock shall be payable in cash and shall accrue at the per annum rate of 5% on the Series B Purchase Price per share from the date of issuance thereof (the "Series B Preferred Dividends") and, the sum of the Series B Preferred Dividends and the Series B Purchase Price is referred to herein as the "Series B Liquidation Preference"). Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series B Preferred Stock, such payment shall be distributed ratably among the holders of Series B Preferred Stock based upon the aggregate accrued but unpaid dividends on the Series B Preferred Stock held by each holder.

(b) Series A Preferred Stock Dividends. The holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock, shall be entitled to receive, when and if declared by the Board of Directors out of funds legally available for the purpose, dividends as provided in this Section A.1. Dividends on each share of Series A Preferred Stock shall be payable in cash and shall accrue at the per annum rate of 5% on the Series A Purchase Price per share from the date of issuance thereof (the "Series A Preferred Dividends") and, the sum of the Series A Preferred Dividends and the Series A Purchase Price is referred to herein as the "Series A Liquidation Preference"). Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series A Preferred Stock, such payment shall be distributed ratably among the holders of Series A Preferred Stock based upon the aggregate accrued but unpaid dividends on the Series A Preferred Stock held by each holder.

(c) Calculation; Accrual. Each of the Series A Preferred Dividends and Series B Preferred Dividends shall be calculated annually in arrears on December 31 of each year, prorated on a daily basis for partial periods. Series A Preferred Dividends and Series B Preferred Dividends shall commence to accrue on each share of such series of Preferred Stock from the date of issuance thereof and continue to accrue thereafter until the Series A Liquidation Preference or Series B Liquidation Preference with respect to such share, as the case may be, is paid in full in cash, whether or not such dividends are declared by the Board of Directors and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends.

(d) Dividend Distribution or Redemption Approval. Without the consent of the Requisite Holders, so long as any shares of Preferred Stock are outstanding, the Corporation shall not declare, pay or set apart for payment any dividends or make any other distribution on or redeem any other class or series of the Corporation's Common Stock (other than stock dividends and distributions in the nature of a stock split or the like) and will not permit any Subsidiary to redeem, purchase or otherwise acquire for value, or set apart for any sinking or other analogous fund for the redemption or purchase of, any Common Stock; *provided, however*, that the

((H05000275754 3)))

((H05000275754 3)))

Corporation may purchase, redeem or acquire shares of Common Stock and Convertible Securities issued to directors and employees of, and consultants to, the Corporation pursuant to equity incentive plans upon termination of employment or in accordance with other arrangements approved by the Board of Directors.

(e) Dividend Calculation Adjustment. All numbers relating to the calculation of dividends pursuant to this Section A.2 shall be equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving Preferred Stock or Common Stock.

(f) Cancellation upon Conversion. Accrued and unpaid Series A Preferred Dividends and/or Series B Preferred Dividends shall be canceled upon the conversion of the such series of Preferred Stock into Common Stock as provided in Section A.4 hereof.

3. Liquidation Preference.

(a) Priority. At all times, each share of Series B Preferred Stock shall rank, on liquidation, senior to each and every share of Series A Preferred Stock and Common Stock.

(b) Series B Liquidation Preference Payment. Subject to the priority provisions of this Section A.3, upon (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, (ii) a Sale of the Corporation or (iii) a reorganization of the Corporation required by any court or administrative body in order to comply with any provision of law (each of the events referred to in clauses (i), (ii) and (iii) being referred to as a "Liquidation Event"), each holder of Series B Preferred Stock shall be entitled, after provision for the payment of the Corporation's debts and other liabilities and in preference to, and, before any amount or property shall be paid or distributed on account of the Series A Preferred Stock or the Common Stock, to be paid in full in cash with respect to each share of Series B Preferred Stock out of the assets of the Corporation available for distribution to stockholders, an amount equal to the Series B Liquidation Preference. If upon any Liquidation Event the amount available for distribution among the holders of all outstanding Series B Preferred Stock is insufficient to permit the payment of the Series B Liquidation Preference of each share of Series B Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Series B Preferred Stock ratably in proportion to the relative Series B Liquidation Preferences of the Series B Preferred Stock held by such holders, and the holders of Series A Preferred Stock and of Common Stock shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof. Upon any Liquidation Event, after the holders of Series B Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Series B Preferred Stock as provided above in this Section A.3(b), the remaining net assets of the Corporation shall be distributed to the other stockholders of the Corporation as their respective interests may appear.

(c) Series A Liquidation Preference Payment. Subject to the priority provisions of this Section A.3, upon a Liquidation Event, each holder of Series A Preferred Stock shall be entitled, after provision for the payment of the Corporation's debts and other liabilities and in preference to, and, before any amount or property shall be paid or distributed on account of the Common Stock, to be paid in full in cash with respect to each share of Series A Preferred Stock

((H05000275754 3)))

(((H05000275754 3)))

out of the assets of the Corporation available for distribution to stockholders, an amount equal to the Series A Liquidation Preference. If upon any Liquidation Event the amount available for distribution among the holders of all outstanding Series A Preferred Stock is insufficient to permit the payment of the Series A Liquidation Preference of each share of Series A Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Series A Preferred Stock ratably in proportion to the relative Series A Liquidation Preferences of the Series A Preferred Stock held by such holders, and the holders of Common Stock shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof. Upon any Liquidation Event, after the holders of Series B Preferred Stock and the Series A Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Preferred Stock as provided above in Section A.3(b) and this Section A.3(c), the remaining net assets of the Corporation shall be distributed to the other stockholders of the Corporation as their respective interests may appear.

(d) Series B Participation. After payment in full of the Series B Liquidation Preference and the Series A Liquidation Preference, each holder of Series B Preferred Stock then outstanding shall be entitled to be paid out of the remaining net assets of the Company as and when distributed ratably with the holders of the Common Stock, such amount as would otherwise be distributable to such holder had such holder held, on the date of the first such distribution pursuant to this paragraph (d) the number of shares of Common Stock into which the Series B Preferred Stock would have been convertible upon exercise of the conversion rights described in Section A.4 hereof.

(e) Sale of the Corporation.

(i) Notwithstanding Section A.3(b) and Section A.3(c), neither a Sale of the Corporation nor any reorganization of the Corporation of the type referenced in clause (iii) of Section A.3(b) shall be deemed to be a Liquidation Event for the purposes of this Section A.3 if the Requisite Holders waive in writing the provisions of this Section A.3 with respect to such event.

(ii) The affirmative vote of the Requisite Series A Stockholders, acting by written consent or voting separately as single class in person or by proxy at an annual meeting or special meeting called for the purpose, shall be necessary to authorize the Corporation to enter into or effect any Sale of the Corporation unless immediately upon giving effect thereto the Series A Liquidation Preference with respect to each outstanding share of Series A Preferred Stock, calculated through the date such Sale of the Corporation is consummated, is paid in full as provided in Section A.3(a).

(f) No Effect on Conversion Rights. The provisions of this Section A.3 shall not in any way limit the right of the holders of Preferred Stock to elect to convert their shares of Preferred Stock into shares of Common Stock in accordance with Section A.4 hereof prior to or in connection with any Liquidation Event.

(((H05000275754 3)))

(((H05000275754 3)))

4. Conversion into Common Stock. The holders of Preferred Stock shall have the following conversion rights:

(a) Voluntary Conversion. At any time, each holder of Preferred Stock shall be entitled, without the payment of any additional consideration, to cause all or any portion of the shares of Preferred Stock held by such holder to be converted into a number of shares of Common Stock determined as hereafter provided in this Section A.4(a), which shares shall upon the issuance thereof be fully paid and non-assessable. The number of shares of Common Stock issuable upon the conversion of the Preferred Stock shall be determined on the basis of the ratio that results from dividing (a) as to the Series A Preferred Stock, (i) the Series A Purchase Price by (ii) the Series A Conversion Price (as defined below) of the Series A Preferred Stock, both as in effect at the time of conversion, and (b) as to the Series B Preferred Stock, (i) the Series B Purchase Price by (ii) the Series B Conversion Price (as defined below) of the Series B Preferred Stock, both as in effect at the time of conversion. As of the Effective Time, the "Series A Conversion Price" equals the Series A Purchase Price and the "Series B Conversion Price" equals the Series B Purchase Price. The number of shares of Common Stock into which shares of Preferred Stock are convertible and each of the Series A Conversion Price and Series B Conversion Price are subject to adjustment from time to time as hereafter provided.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted, without the payment of any additional consideration, into the number of shares of Common Stock provided for in Section A.4(a) immediately upon the consummation of the Corporation's first underwritten Public Offering resulting in at least \$15 million of proceeds to the Corporation before underwriting discounts and commissions and offering expenses (a "Qualified Public Offering"), provided that if a Qualified Public Offering is consummated, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior to such consummation. Each share of Series A Preferred Stock shall automatically be converted, without the payment of any additional consideration, into the number of shares of Common Stock provided for in Section A.4(a) immediately upon the voluntary conversion of any share of Series A Preferred Stock in accordance with Section A.4(c) after giving effect to which a majority of the total number of shares of Series A Preferred Stock originally issued shall have been so converted (a "Majority A Conversion"). Each share of Series B Preferred Stock shall automatically be converted, without the payment of any additional consideration, into the number of shares of Common Stock provided for in Section A.4(a) immediately upon the voluntary conversion of any share of Series B Preferred Stock in accordance with Section A.4(c) after giving effect to which a majority of the total number of shares of Series B Preferred Stock originally issued shall have been so converted (a "Majority B Conversion").

(c) Procedure for Voluntary Conversion: Effective Date. Upon the election to convert the Series A Preferred Stock or Series B Preferred Stock made in accordance with Section A.4(a), the holders of the series of Preferred Stock making such election shall provide written notice of such conversion (the "Voluntary Conversion Notice") to the Corporation setting forth the number of shares of Preferred Stock each such holder elects to convert into Common Stock (the "Elected Preferred Stock"). On the date the Voluntary Conversion Notice is delivered to the Corporation, such shares of Elected Preferred Stock shall thereupon be converted, without further action, into the number of shares of Common Stock provided for in Section A.4(a), and

(((H05000275754 3)))

(((H05000275754 3)))

such number of shares of Common Stock into which the Elected Preferred Stock is converted shall thereupon be deemed to have been issued to such holders of the Elected Preferred Stock. Such holders shall as soon as practicable thereafter surrender to the Corporation at the Corporation's principal executive office the certificate or certificates evidencing the Elected Preferred Stock, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or an Affidavit of Loss with respect thereto. Upon surrender of such certificates or delivery of an Affidavit of Loss with respect thereto, the Corporation shall issue and deliver to the holder so surrendering such certificates or to such holder's designee, at an address designated by such holder, certificates for the number of shares of Common Stock into which such holder's Elected Preferred Stock shall have been converted. The issuance of certificates for shares of Common Stock upon conversion of Elected Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such stock. Notwithstanding anything to the contrary set forth in this Section A.4(c), in the event that the holders of the shares of any series of Preferred Stock elect to convert such shares pursuant to Section A.4(a) in connection with any Liquidation Event, Public Offering or other specified event, (i) such conversion may at the election of such holders be conditioned upon the consummation of such Liquidation Event, Public Offering or the occurrence of such other specified event, in which case, such conversion shall not be deemed to be effective until the consummation of such Liquidation Event, Public Offering or the occurrence of such other specified event and (ii) if such Liquidation Event, Public Offering or other specified event is consummated or occurs, all shares of Elected Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior thereto.

(d) Procedure for Automatic Conversion. As of the date of, and in all cases subject to, the consummation of a Qualified Public Offering, all outstanding shares of Preferred Stock shall be converted automatically, without further action, into the number of shares of Common Stock provided for in Section A.4(a), and such number of shares of Common Stock into which the Preferred Stock is converted shall be deemed to have been issued to the holders of Preferred Stock. Such holders shall as soon as practicable thereafter surrender the certificate or certificates evidencing the Preferred Stock, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or an Affidavit of Loss with respect thereto. Upon surrender of such certificates or delivery of an Affidavit of Loss with respect thereto, the Corporation shall issue and deliver to such holder so surrendering such certificates or to such holder's designee, promptly (and in any event in such time as is sufficient to enable such holder to participate in such Qualified Public Offering) at an address designated by such holder, certificates for the number of shares of Common Stock into which such holder's Preferred Stock shall have been converted.

(e) Fractional Shares; Partial Conversion. No fractional shares shall be issued upon conversion of any shares of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If any fractional interest in a share of Common Stock would, except for the provisions of the first sentence of this paragraph (e), be delivered upon any such conversion, the Corporation, in lieu of delivering the fractional share thereof, shall pay to the holder surrendering the Preferred Stock for conversion an amount in cash equal to the current fair market value of such

(((H05000275754 3)))

(((H05000275754 3)))

fractional interest as determined in good faith by the Board of Directors of the Corporation. In case the number of shares of Preferred Stock represented by the certificate or certificates surrendered for conversion exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder thereof, at the expense of the Corporation, a new certificate or certificates for the number of shares of Preferred Stock represented by the certificate or certificates surrendered that are not to be converted.

5. Adjustments.

(a) Adjustments for Subdivisions, Combinations or Consolidation of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided by stock split, stock dividends or otherwise, into a greater number of shares of Common Stock, the Series A Conversion Price and Series B Conversion Price then in effect with respect to each series of Preferred Stock shall, concurrently with the effectiveness of such subdivision, be proportionately decreased so that the number of shares of Common Stock issuable on conversion of any shares of the respective series of Preferred Stock shall be increased in proportion to such increase in outstanding shares. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Series A Conversion Price and Series B Conversion Price then in effect with respect to each series of Preferred Stock shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased so that the number of shares of Common Stock issuable on conversion of any shares of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(b) Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock or into any other securities or property, whether by capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction (other than a subdivision or combination of shares provided for above), each share of Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such share of Preferred Stock shall have been entitled upon such capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction if immediately prior to such capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction such holder had converted such holder's Preferred Stock into Common Stock. The provisions of this Section A.5(b) shall similarly apply to successive capital reorganizations, reclassifications, mergers, combinations of shares, recapitalizations, consolidations, business combinations or other transactions. The Corporation shall not effect any Sale of the Corporation that is not, in accordance with Section A.2(b), a Liquidation Event unless prior to or simultaneously with the consummation thereof the successor Corporation or purchaser, as the case may be, shall assume by written instrument the obligation to deliver to the holders of Preferred Stock such shares of stock, securities or assets as, in accordance with the foregoing provisions, each such holder is entitled to receive.

(((H05000275754 3)))

(((H05000275754 3)))

(c) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. Unless otherwise agreed by the Requisite Series B Stockholders, in the event the Corporation shall at any time after the date of the Original Issue Date issues or sells or, in accordance with Section A.5(e) is deemed to have issued or sold, any shares of Common Stock or Convertible Securities without consideration or for consideration per share less than the applicable Series B Conversion Price in effect immediately prior to such issue or sale, then and in such event, such Series B Conversion Price shall be reduced, concurrently with such issue or sale to a price determined by multiplying such Series B Conversion Price by a fraction, (A) the numerator of which shall be the sum of (1) the number of share of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (2) the quotient of (x) the aggregate consideration, if any, received or receivable by the Corporation on account of such issue or sale divided by (y) the Series B Conversion Price in effect immediately prior to such sale or issue; and (B) the denominator of which shall be the sum of (1) number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale plus (2) the number of shares of Common Stock so issued. Notwithstanding the foregoing, no adjustments shall be made under this Section A.5(c) with respect to the issue of any Excluded Securities.

(d) Effect of Failure to Exercise Preemptive Right. Notwithstanding anything to the contrary set forth in this Section A.5, no holder of Series B Preferred Stock or common Stock that shall have been issued upon conversion of the Series B Preferred Stock shall have any rights under Section A.5(c), if at any time such holder fails to exercise its preemptive right in full under any Shareholder Agreement or other agreement entered into by the Company and such holder to purchase its proportionate share of Common Stock or Convertible Securities, other than Excluded Securities, sold or offered for sale by the Company.

(e) Effect of Certain Events on Conversion Prices.

(i) Issuance of Convertible Securities. If the Corporation in any manner grants, issues or sells any Convertible Securities, whether or not the rights to exercise, convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such exercise, conversion or exchange is less than the Series B Conversion Price in effect immediately prior to the time of such grant, issue or sale, then the maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the grant, issue or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (x) the total amount received or receivable by the Corporation as consideration for the grant, issue or sale of such Convertible Securities, plus the cumulative minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange thereof and, if applicable, the exercise, conversion and exchange of any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for (in each case, as set forth in the instruments and agreements relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration), by (y) the total maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities (as set forth in the instruments and agreements relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number). No further adjustment

(((H05000275754 3)))

(((H05000275754 3)))

of the Conversion Price shall be made when Common Stock and, if applicable, any other Convertible Securities, are actually issued upon the exercise, conversion or exchange of such Convertible Securities. If the Corporation issues any Convertible Securities that entitle the holder thereof, *inter alia*, both (i) to exercise, convert or exchange the same into or for Common Stock or otherwise to participate with the holders of Common Stock in distributions upon the occurrence of a Liquidation Event and (ii) the payment of a fixed or defined sum (such a sum being referred to as the "Preference Payment"), the Preference Payment of such Convertible Securities shall be ignored for purposes of determining the "total maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities" for purposes of clause (v) above.

(ii) Change in Exercise Price or Conversion Rate. If the additional consideration payable to the Corporation upon the exercise, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock should change at any time, the Conversion Price that is in effect at the time of such change that was adjusted in accordance with Section A.5(e)(i) upon the issuance of such Convertible Securities shall be readjusted to the Conversion Price that would have been in effect at such time had such Convertible Securities that are still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time such Convertible Securities were initially granted, issued or sold; and on the termination date of any right to exercise, convert or exchange such Convertible Securities without such right having been exercised, the Conversion Price then in effect hereunder shall be adjusted to the Conversion Price that would have been in effect at the time of such termination had such Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(iii) Exceptions for Excluded Securities. Notwithstanding the foregoing, no adjustments shall be made under Section A.5(e) with respect to the issue of any Excluded Securities.

(iv) Valuation of Non-Cash Consideration. The consideration received by the Corporation for the issue of any shares of Common Stock, Convertible Securities or any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for shall be computed as follows:

- (A) Insofar as such consideration consists of cash, such consideration shall equal the aggregate amount of cash paid or payable to the Corporation prior to amounts paid or payable for accrued interest or accrued dividends and prior to any commissions or expenses paid by the Corporation;
- (B) Insofar as such consideration consists of property other than cash, such consideration shall be calculated at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(((H05000275754 3)))

((H05000275754 3)))

- (C) In the event shares of Common Stock, Convertible Securities or any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for are issued together with other securities or other assets of the Corporation for consideration that is allocable to both such Common Stock and Convertible Securities, and to such other securities and assets, the portion of such consideration allocable to such Common Stock or Convertible Securities shall be that set forth in the instruments and agreements issued or entered into in connection with such transaction, and if no such allocation is so set forth, then the portion of such consideration allocable to such Common Stock or Convertible Securities, calculated as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price or Series B Conversion Price pursuant to this Section A.4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based and the Conversion Price then in effect. The Corporation shall, upon the written request at any time by any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) 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 such holder's Preferred Stock.

(g) Rounding. All calculations under this Section A.4 shall be made to (i) the nearest one cent or (ii) the nearest share or (iii) the nearest one percent, as the case may be.

6. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the issued or issuable shares of Preferred Stock, such number of its shares of Common Stock as the case may be, as shall from time to time be sufficient to effect the conversion of all outstanding shares of 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 Preferred Stock, the Corporation will take all such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

7. No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Preferred Stock in any manner that would interfere with the timely conversion of any shares of Preferred Stock in accordance with the provisions hereof.

8. Listing on Securities Exchanges, etc. The Corporation will list on each national securities exchange and NASDAQ on which any Common Stock may at any time be listed,

((H05000275754 3)))

((H05000275754 3)))

subject to official notice of issuance upon the conversion of the Preferred Stock, all shares of Common Stock from time to time issuable upon the conversion of Preferred Stock pursuant to these Articles of Incorporation and will maintain such listing as long as any Common Stock is listed.

9. Notice.

(a) Liquidation Events, Extraordinary Transactions, Etc. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any Liquidation Event or (ii) any Liquidation Event is approved by the Board of Directors or the Corporation enters into any agreement with respect thereto, the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Preferred Stock at least ten (10) days prior to such record date specified therein or the expected effective date of any such transaction, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event is expected to become effective and, in the case of a Sale of the Corporation, the identity of the parties thereto, and (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event.

(b) Waiver of Notice. The Requisite Series A Stockholders and Requisite Series B Stockholders, respectively, may at any time upon written notice to the Corporation waive, either prospectively or retrospectively, any notice provisions specified herein, and any such waiver shall be effective as to all holders of such applicable series of Preferred Stock.

(c) General. In the event that the Corporation provides any notice, report or statement to any holder of Common Stock, the Corporation shall at the same time provide a copy of any such notice, report or statement to each holder of outstanding shares of Preferred Stock.

B. VOTING.

1. Voting Generally. The holder of each share of Preferred Stock shall vote with holders of Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders. For such purpose, each holder of Preferred Stock shall be entitled to the number of votes per share of Preferred Stock as equals the largest number of shares of Common Stock into which each share of Preferred Stock may be converted pursuant to Section A.4 on the record date fixed for the determination of stockholders entitled to vote or on the effective date of any written consent of stockholders, as applicable. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula with respect to any holder of Preferred Stock shall be rounded to the nearest whole number (with one-half rounded upward to one). There shall be no cumulative voting.

2. Class Voting.

(a) The Holders of Series A Preferred Stock may vote as a separate single class on any proposed amendment to these Amended and Restated Articles of Incorporation, which will

((H05000275754 3)))

((H05000275754 3)))

adversely affect the rights, privileges, and preferences of Series A Preferred Stock; except that, the Corporation may amend the Amended and Restated Articles of Incorporation or otherwise designate a class of Preferred Stock that will have rights, privileges and preferences *pari passu* or senior to those of Series A Preferred Stock without the approval of holders of Series A Preferred Stock voting as a separate single class.

(b) The Holders of Series B Preferred Stock may vote as a separate single class on any proposed amendment to these Amended and Restated Articles of Incorporation, which will adversely affect the rights, privileges, and preferences of Series B Preferred Stock.

3. Special Approval Rights. So long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent of the Requisite Series B Stockholders:

(a) Authorize or issue, or obligate itself to issue, any equity security (including any security convertible into or exercisable for any equity security) senior to or on parity with the Series B Preferred Stock other than Excluded Securities;

(b) Directly or indirectly redeem, purchase or otherwise acquire any of the then outstanding shares of the Company's capital stock (including options, warrants or other derivative securities) having liquidation preferences or dividend rights junior to those of the Series B Preferred Stock, except for a redemption, repurchase or other acquisition under stock option or restricted stock agreements with officers, directors, employees, consultants or other persons approved by the Board of Directors of the Corporation or its designated committee;

(c) Declare or pay dividends or other distributions on Common Stock or Series A Preferred Stock;

(d) Effect a Sale of the Corporation; or

(e) Amend or Restated these Articles of Incorporation affecting or modifying the rights, preferences obligations or terms of the Series B Preferred Stock.

C. UNDESIGNATED PREFERRED STOCK

1. General. Shares of Undesignated Preferred Stock may be issued in one or more series at such time or times and for such consideration or considerations as the Corporation's Board of Directors may determine. Each such series of Undesignated Preferred Stock shall be so designated as to distinguish the shares thereof from the shares of all other series and classes.

2. Designation, Voting Powers, Preferences, etc. Undesignated Preferred Stock may be issued with such designations, voting powers (or no voting powers), preferences and relative, participating, optional or other special rights, and qualifications, limitations and restrictions on such rights, as the Board of Directors may authorize by resolutions duly adopted prior to the issuance of any shares of any series of Undesignated Preferred Stock, including, but not limited to: (i) the distinctive designation of each series and the number of shares that will constitute such series; (ii) the voting rights, if any, of shares of such series and whether the shares of any such

((H05000275754 3)))

(((H05000275754 3)))

series having voting rights shall have multiple or fractional votes per share; (iii) the dividend rate on the shares of such series, any restriction, limitation, or condition upon the payment of such dividends, whether dividends shall be cumulative, and the dates on which dividends are payable; (iv) the prices at which, and the terms and conditions on which, the shares of such series may be redeemed, if such shares are redeemable; (v) the purchase or sinking fund provisions, if any, for the purchase or redemption of shares of such series; (vi) any preferential amount payable upon shares of such series in the event of the liquidation, dissolution, or winding-up of the Corporation, or the distribution of its assets; (vii) the prices or rates of conversion at which, and the terms and conditions on which, the shares are convertible; and (viii) such other preferences, powers, qualifications, rights and privileges, all as the Board of Directors may deem advisable and as are not inconsistent with law and the provisions of these Articles of Incorporation.

D. COMMON STOCK

1. General. The rights of the holders of the Common Stock with respect to dividends and upon the liquidation, dissolution and winding up of the Corporation's affairs, are subject to and qualified by the rights of the holders of Preferred Stock as specified herein and any other class of the Corporation's Capital Securities that may hereafter be issued and outstanding having rights upon the occurrence of a Liquidation Event senior to or pari passu with the rights of holders of Common Stock. Each share of Common Stock shall be treated identically as all other shares of Common Stock with respect to dividends, distributions, rights in liquidation and in all other respects.

2. Voting. Each holder of shares of Common Stock is entitled to one vote for each share thereof held by such holder at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding shares of Preferred Stock, and any other classes or series of the Corporation's Capital Stock that may hereafter be authorized and issued having preferred dividend rights senior to or pari passu with the rights of holders of Common Stock.

4. Liquidation. Upon the occurrence of a Liquidation Event, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to the rights and preferences of any then outstanding shares of Preferred Stock (including the participation rights of the Series B Preferred Stock set forth in Section A.3(d)) and any other classes or series of the Corporation's Capital Securities that are issued and outstanding having rights upon the occurrence of a Liquidation Event senior to or pari passu with the rights of holders of Common Stock.

ARTICLE VI

LIMITATION OF LIABILITY; INDEMNIFICATION

(((H05000275754 3)))

(((H05000275754 3)))

Provided the person proposed to be indemnified satisfies the requisite standard of conduct for permissive indemnification by a corporation as set forth in the applicable provisions of the Florida Business Corporation Act (currently, Sections 607.0850(1) and (2) of the Florida Statutes), as the same may be amended from time to time, the Corporation shall indemnify its officers and directors, and may indemnify its employees and agents, to the fullest extent permitted by the provisions of such Law, as the same may be amended and supplemented, from and against any and all of the expenses or liabilities incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding (other than in an action, suite or proceeding brought by this Corporation upon authorization of the Board of Directors) or other matters referred to in or covered by said provisions, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, both as to action in their official capacity and as to action in any other capacity while an officer, director, employee or other agent. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Section. Such expenses (including attorneys' fees) incurred by other employees and agents shall also be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate. The indemnification and advancement of expenses provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any law, bylaw, agreement, vote of shareholders or directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. Such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs and personal and other legal representatives of such a person. Except as otherwise provided above, an adjudication of liability shall not affect the right to indemnification for those indemnified.

ARTICLE VII

AMENDMENTS

The Corporation reserves the right to amend, alter or repeal any provisions contained in this Amended and Restated Articles of Incorporation from time to time and at any time in the manner now or hereafter prescribed in this Amended and Restated Articles of Incorporation and by the laws of the State of Florida, and all rights herein conferred upon shareholders are granted subject to such reservation.

ARTICLE VIII

MISCELLANEOUS

In furtherance and not in limitation of the powers conferred by the laws of the State of Florida:

(((H05000275754 3)))

((H05000275754 3)))

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the By-laws of the Corporation.

B. Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Florida as the By-laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

D. Meetings of the stockholders may be held within or without the State of Florida, as the By-laws may provide.

ARTICLE IX

DEFINITIONS

The following terms are used herein with the meanings indicated:

"Affidavit of Loss" an affidavit or agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred in connection with the loss of any share certificate evidencing shares of the Corporation's Capital Securities.

"Affiliate" or "affiliate" means with respect to any Person other than the Corporation, any other Person that would be considered to be an affiliate of such Person under Rule 144(a) of the rules of regulations of the Securities and Exchange Commission, as in effect on the date hereof.

"Articles of Incorporation" means these Articles of Incorporation, as amended from time to time.

"Board of Directors" means the Corporation's duly elected or appointed Board of Directors.

"Capital Securities" means, as to any Person that is a corporation, the authorized shares of such Person's capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the ownership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise control over such Person.

"Common Stock" has the meaning specified in Article V.

"Common Stock Deemed Outstanding" means, at any time of measurement thereof, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock (as equitably

((H05000275754 3)))

(((H05000275754 3)))

adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving Common Stock after the Effective Time), plus (without duplication) the number of shares of Common Stock issuable upon the exercise in full of all outstanding Convertible Securities whether or not such Convertible Securities are convertible into or exchangeable or exercisable for Common Stock at such time.

"Conversion Price" has the meaning specified in Article V, Section A.4(a).

"Convertible Securities" means securities or obligations that are exercisable for, convertible into or exchangeable for shares of Common Stock. The term includes shares of Preferred Stock, options, warrants or other rights to subscribe for or purchase Common Stock or to subscribe for or purchase other Capital Securities or obligations that are, directly or indirectly, exercisable for, convertible into or exchangeable for Common Stock.

"Effective Time" means the time these Articles of Incorporation are filed with the Office of the Secretary of State of Florida in accordance with the Florida Business Corporation Act.

"Elected Preferred Stock" has the meaning specified in Article V, Section A.4(c).

"Excluded Securities" means (i) Capital Securities issued by the Corporation in a Qualified Public Offering, (ii) Convertible Securities or restricted stock grants issued to employees or members of the Board of Directors of, or consultants or other service providers to, the Corporation that are options to purchase shares of Common Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving Common Stock after the Effective Time and the issuance of shares of Common Stock upon the exercise of any such options, (iii) Capital Securities issued by the Corporation as direct consideration to any Persons (including the stockholders or owners of Persons) as all or part of the consideration paid for the acquisition of ownership interests in, or assets of, such Person unless (A) such Person is an Affiliate of the Corporation (other than a Subsidiary) or (B) Affiliates of the Corporation collectively own more than ten percent (10%) of the ownership interests in such Person, (iv) Capital Securities issued by the Corporation to Persons who are not Affiliates of the Corporation as partial consideration for debt financing, equipment lease financing or underwritten high yield bond financing pursuant to a registered public offering under the Securities Act of 1933, as amended, or pursuant to Rule 144A thereunder, (v) Capital Securities issued by the Corporation in connection with a stock split, stock dividend, combination, reorganization, recapitalization or other similar event for which adjustment is made in accordance with Section A.5 (vi) Capital Securities issued by the Corporation upon the conversion of shares of Preferred Stock, and (vii) Capital Securities granted to vendors, customers, suppliers or other strategic partners under agreements or plans approved by the Board Of Directors.

"Liquidation Event" has the meaning specified in Article V, Section A.3(b).

"Original Issue Date" means, for any share of Series B Preferred Stock, the date on which the such share of Series B Preferred Stock was originally issued by the Corporation.

(((H05000275754 3)))

((H05000275754 3)))

"Person" or "person" means an individual, partnership, corporation, limited liability company, association, trust, joint venture, unincorporated organization or other entity and any government, governmental department or agency or political subdivision thereof.

"Preference Payment" has the meaning specified in Article V, Section A.5(e).

"Public Offering" means any offering by the Corporation of its Common Stock to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, or any comparable statement under any similar federal statute then in force, other than an offering of shares being issued as consideration in a business acquisition or combination or an offering in connection with an employee benefit plan.

"Qualified Public Offering" has the meaning specified in Article V, Section A.4(b).

"Requisite Holders" means the Requisite Series A Stockholders and the Requisite Series B Stockholders.

"Requisite Series A Stockholders" means the holders of more than 50% of the issued and outstanding Series A Preferred Stock.

"Requisite Series B Stockholders" means the holders of more than 50% of the issued and outstanding Series B Preferred Stock.

"Sale of the Corporation" means any of the following: (a) a merger or consolidation of the Corporation into or with any other Person or Persons who are not Affiliates of the Corporation in a single transaction or a series of transactions, whether or not such transactions are related, in which the stockholders of the Corporation immediately prior to such merger, consolidation, transaction or first of such series of transaction possess less than a majority of the Corporation's issued and outstanding voting Capital Securities immediately after such merger, consolidation, transaction or series of such transactions (*provided* that a Qualified Public Offering the Corporation's issue of its voting Capital Securities in a *bona fide* financing transaction having such an effect shall not be a "Sale of the Corporation"); or (b) a single transaction or series of transactions, whether or not such transactions are related, pursuant to which a Person or Persons who are not Affiliates of the Corporation acquire all or substantially all of the Corporation's assets determined on a consolidated basis.

"Series A Liquidation Preference" has the meaning specified in Article V, Section A.2(b).

"Series A Preferred Dividends" has the meaning specified in Article V, Section A.2(b).

"Series A Preferred Stock" has the meaning specified in Article V, Section A.1(a).

"Series A Purchase Price" means \$ 0.40 per share of Series A Preferred Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving the Series A Preferred Stock after the Effective Time).

((H05000275754 3)))

(((H05000275754 3)))

"Series B Liquidation Preference" has the meaning specified in Article V, Section A.2(a).

"Series B Preferred Dividends" has the meaning specified in Article V, Section A.2(a).

"Series B Preferred Stock" has the meaning specified in Article V, Section A.1(b).

"Series B Purchase Price" means \$ 0.80 per share of Series B Preferred Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving the Series B Preferred Stock after the Effective Time).

"Subsidiary"/"Subsidiaries" means any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof is at the time owned or controlled, directly or indirectly, by the Corporation or one or more of the other Subsidiaries of the Corporation or a combination thereof, or (ii) if a partnership, limited liability company, association or other business entity, a majority of the ownership interests therein is at the time owned or controlled, directly or indirectly, by the Corporation or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, the Corporation shall be deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if the Corporation shall be allocated a majority of partnership, limited liability company, association or other business entity gains or losses or shall be or control the managing general partner of such partnership, association or other business entity or the managing member of such limited liability company.

"Voluntary Conversion Notice" has the meaning specified in Article V, Section A.4(c).

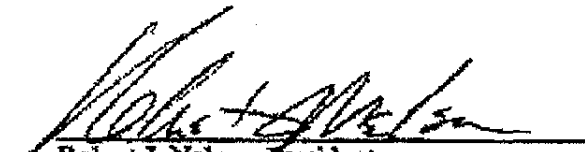
[The rest of this page deliberately left blank; the next page is the signature page.]

Dec. 1. 2005 10:06AM

No. 1041 P. 21

* (((H05000275754 3)))

IN WITNESS WHEREOF, the undersigned President of the Corporation, for the purpose of amending and restating the Corporation's Articles of Incorporation pursuant to the laws of the State of Florida, has executed these Amended and Restated Articles of Incorporation this 30 day of November, 2005.


Robert J. Nelson, President

(((H05000275754 3)))