

UNITED STATES
INCORPORATION
COMPANY

P93060069730

ACCOUNT NO. : 072100000032

REFERENCE : 673024 4303929

AUTHORIZATION

Patricia P. P. 8750

COST LIMIT : \$ PREPAID

ORDER DATE : January 19, 1998

ORDER TIME : 9:39 AM

ORDER NO. : 673024-005

600002404126--5

CUSTOMER NO: 4303929

CUSTOMER: Myrna Golinsky, Legal Asst
Greenberg Traurig
1221 Brickell Avenue

Miami, FL 33131

DOMESTIC AMENDMENT FILING

NAME: UPSCALE WATER TECHNOLOGIES,
INC.

EFFECTIVE DATE:

☒ ARTICLES OF AMENDMENT
☐ RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

☒ CERTIFIED COPY
☐ PLAIN STAMPED COPY
☐ CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Daniel W Leggett

EXAMINER'S INITIALS:

AM/Rest 2 RC 9/27

FILED
98 JAN 20 PM 3:09
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECEIVED
98 JAN 20 AM 8:41
DIVISION OF CORPORATION



FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham
Secretary of State

RECEIVED

98 JAN 23 AM 8:45

DIVISION OF CORPORATION

January 22, 1998

CSC
DANIEL LEGGETT
TALLAHASSEE, FL

SUBJECT: UPSCALE WATER TECHNOLOGIES, INC.
Ref. Number: P93000069730

RESUBMIT

Please give original
submission date as file date.

We have received your document for UPSCALE WATER TECHNOLOGIES, INC. and the authorization to debit your account in the amount of \$87.50. However, the document has not been filed and is being returned for the following:

The person designated as registered agent in the document and the person signing as registered agent must be the same.

THE REGISTERED AGENT IN PART "FOURTH" DOES NOT MATCH THAT 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) 487-6880.

Karen Gibson
Corporate Specialist

Letter Number: 698A00003645



RECEIVED JAN 22 10:02
FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham
Secretary of State

January 20, 1998

CSC
DANIEL W. LEGGETT
TALLAHASSEE, FL

SUBJECT: UPSCALE WATER TECHNOLOGIES, INC.
Ref. Number: P93000069730

RESUBMIT

Please give original
submission date as file date.

We have received your document for UPSCALE WATER TECHNOLOGIES, INC. and the authorization to debit your account in the amount of \$87.50. However, the document has not been filed and is being returned for the following:

The registered agent and registered office listed in your articles of incorporation must be consistent throughout the document.

THE TERM "REGISTERED OFFICE" MEANS ADDRESS OF THE REGISTERED AGENT FOR SERVICE OF PROCESS. PLEASE CORRECT ARTICLE FOURTH. PERHAPS THE FIRST ADDRESS SHOULD BE TERMED "PRINCIPAL OFFICE".

The registered agent must sign accepting the designation.

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

If you have any questions concerning the filing of your document, please call (850) 487-6880.

Karen Gibson
Corporate Specialist

Letter Number: 998A00002927

**AMENDED AND RESTATED ARTICLES OF INCORPORATION OF
UPSCALE WATER TECHNOLOGIES, INC.**

The undersigned, MARK LUBIN, being the Chief Executive Officer of Upscale Water Technologies, Inc., a Florida Corporation (the "Corporation"), hereby states on behalf of the Corporation as follows:

1. The Corporation was incorporated as Upscale Fisheries, Inc. on September 30, 1993, the date on which the Articles of Incorporation were filed with the Secretary of State of the State of Florida under document number P93000069730. Restated Articles of Incorporation of Upscale Fisheries, Inc. were filed with the Secretary of State of the State of Florida on December 15, 1994. The name of the Corporation was changed to Upscale Technologies, Inc. on June 22, 1995, the date on which the Articles of Amendment to the Articles of Incorporation were filed. Further Articles of Amendment to the Articles of Incorporation were filed on April 22, 1996. The name of the Corporation was changed to Upscale Water Technologies, Inc. on April 10, 1997, the date on which the Articles of Amendment to the Articles of Incorporation were filed with the Secretary of State of the State of Florida.

2. Pursuant to the requirements of Sections 607.1006 and 607.1007 of the Florida Business Corporation Act, the undersigned hereby certifies, attests and serves notice that the Articles of Incorporation of the Corporation are hereby amended and restated to read in their entirety as follows:

FIRST. The name of the Corporation is Upscale Water Technologies, Inc.

SECOND. The address of the principal office and the mailing office of the Corporation is 12962 S.W. 132nd Avenue, Miami, Florida 33186.

THIRD. The purpose for which the Corporation is organized is to carry on and transact and to engage in any and all lawful act, activity or business for which Corporations may be organized under the Florida Business Corporation Act, including any amendments thereto.

FOURTH. The street address of the ^{principal} office of the Corporation is 12962 S.W. 132nd Avenue, Miami, Florida 33186, and the name and address of the registered agent of the Corporation is Corporation Service Company, 1201 Hays Street, Tallahassee, Fl 32301.

FIFTH. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is twenty million (20,000,000) shares. Ten million (10,000,000) shares shall be Common Stock and ten million (10,000,000) shares shall be Preferred Stock.

The Preferred Stock shall have a par value of \$0.001 per share. Five million four hundred thousand (5,400,000) shares of the Preferred Stock shall be designated "Series A Preferred Stock" (hereinafter "Series A Preferred"). The Common Stock shall have a par value of \$0.001 per share. The rights, preferences, restrictions and other matters relating to the Series A Preferred are as follows:

1. Dividends.

(a) The holders of the Series A Preferred shall be entitled to receive, when and as declared by the Board of Directors, out of funds legally available therefor, dividends payable in preference and priority to any payment of any dividend on Common Stock of the Corporation. No dividends or other distributions shall be made with respect to the Common Stock until all declared dividends on the Series A Preferred have been paid or set apart.

(b) Notwithstanding paragraph (a) hereof, the Corporation may at any time, out of funds legally available therefor, repurchase shares of Common Stock of the Corporation issued to or held

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TALLAHASSEE, FLORIDA

by employees or consultants of the Corporation or its subsidiaries upon termination of their employment or services, pursuant to any agreement providing for such right of repurchase, whether or not dividends on the Series A Preferred shall have been paid and whether or not such dividends shall have been declared and funds set aside therefor.

2. Liquidation Preference.

(a) At any time, in the event of any of the following occurrences (a "Transaction"):

(i) any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) which will result in the Corporation's shareholders immediately prior to such transaction not holding (by virtue of such shares of securities issued solely with respect thereto) at least 50% of the voting power of the surviving or continuing entity;

(ii) a sale of all or substantially all of the assets of the Corporation, unless the Corporation's shareholders immediately prior to such sale will, as a result of such sale, hold (by virtue of securities issued as consideration for the Corporation's sale) at least 50% of the voting power of the purchasing entity; or

(iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary;

then the Corporation shall take appropriate steps in connection with such Transaction to ensure that the assets of the Corporation available for distribution or such other property issued in connection with such Transaction shall be distributed at the closing of the Transaction in the order and priority that follows:

(i) the holders of the Series A Preferred shall receive, for each share of such stock then held, property or cash in an amount equal to the sum of (i) \$0.05 per share of Series A Preferred (appropriately adjusted for stock splits, reverse stock splits and the like) plus (ii) all declared but unpaid dividends on each such share; then

(ii) all remaining assets available for distribution shall be distributed among the holders of the Series A Preferred and Common Stock pro rata according to the number of shares of Common Stock held by such holders (where, for this purpose, holders of the shares of Series A Preferred shall be deemed to hold, in lieu of their Series A Preferred, the greatest whole number of shares of Common Stock then issuable upon conversion in full of such shares of Series A Preferred pursuant to Section 4).

(b) Any securities to be delivered to the shareholders pursuant to this Section 2 shall be valued as follows:

(i) If traded on a securities exchange or the Nasdaq Stock Market's National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) days prior to the closing; and

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

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors and the holders of a majority of the then outstanding shares of Series A Preferred or, if they are unable to agree, by an independent appraiser mutually acceptable to the Board of Directors and to such holders.

3. Voting Rights. Except as otherwise provided herein or in that certain Investor's Rights Agreement, dated as of January 20, 1998, among the Corporation, Marco Possati and the shareholders named on Schedule I thereto (the "Investor's Rights Agreement"), or as required by law, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Series A Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series A Preferred could be converted at the record date for determination of the shareholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having a general voting power and not separately as a class. Holders of Common Stock and Series A Preferred shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes by the holders of Series A Preferred shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Series A Preferred held by each holder could be converted) be rounded to the nearest whole number. The Investor's Rights Agreement is created under Section 607.0731 of the Florida Business Corporation Act.

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

(a) Right to Convert. Each share of Series A Preferred 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 the Corporation or any transfer agent for the Series A Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing Five Cents (\$0.05) by the Conversion Price, determined as hereinafter provided, in effect at the time of the conversion. The price at which shares of Common Stock shall be deliverable upon conversion (the "Conversion Price") shall initially be Five Cents (\$0.05) per share of Common Stock. Such initial Conversion Price shall be subject to adjustment as hereinafter provided. Upon conversion, all declared and unpaid dividends on the Series A Preferred shall be paid, to the extent funds are legally available therefor, either in cash or in shares of Common Stock of the Corporation, at the election of the Corporation, wherein the shares of Common Stock shall be valued at the fair market value at the time of such conversion, as determined in good faith by the Board of Directors of the Corporation.

(b) Automatic Conversion. Each share of Series A Preferred shall automatically be converted into shares of Common Stock at the then effective Conversion Price upon: (i) the closing of a firm underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of shares of the Corporation's Common Stock at a price per share of Common Stock, prior to underwriter commissions and offering expenses, of not less than \$10 per share (appropriately adjusted for any stock split, dividend, combination, recapitalization or the like) and an aggregate offering price (before deduction of underwriter commissions and offering expenses) of not less than \$10,000,000; or, (ii) the written election of holders of not less than a majority of the then outstanding Series A Preferred (collectively, an "Event of Conversion"). In the event of the automatic conversion of the Series A Preferred upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of Series A Preferred shall not be deemed to have converted such Series A Preferred until immediately prior to the closing of such sale of securities.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled (after aggregating all shares of Series A Preferred held by such holder such that the maximum number of whole shares of Common Stock is issued to such holder upon conversion), the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price. Before any holder of Series A Preferred shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred, and shall give written notice to the Corporation at such office that he elects to convert the same; provided, however, that in the

event of an automatic conversion pursuant to paragraph (b) hereof, the outstanding shares of Series A Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Series A Preferred are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Series A Preferred, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as a result of a conversion into fractional shares of Common Stock. 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 the Series A Preferred to be converted, or, in the case of automatic conversion, on the date of closing of the offering or the date of written election to convert, 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 on such date.

(d) Adjustments of Conversion Price for Diluting Issues.

(i) Adjustments for Dilutive Issuances.

A. Special Definitions. For purposes of this Section 4(d), the following definitions shall apply:

(1) "*Option*" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "*Original Issue Date*" shall mean the date on which the first share of Series A Preferred was first issued.

(3) "*Convertible Securities*" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(4) "*Additional Shares of Common Stock*" shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(i)(C), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(aa) upon conversion of the Series A Preferred; or

(bb) as a dividend or distribution on Series A Preferred or pursuant to any event for which adjustment is made pursuant to subparagraph (d)(ii), (iii) or (iv) hereof.

(5) "*Issue Price*" with respect to any issuance of Additional Shares of Common Stock shall mean the price per share obtained by dividing the total consideration received by the Corporation in respect of such Additional Shares of Common Stock, computed in accordance with Section 4(d)(i)(E) hereof, by the aggregate number of shares of such Additional Shares of Common Stock issued, computed in accordance with Section 4(d)(i)(C) hereof.

B. No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular share of Series A Preferred shall be made hereunder in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to, such issue for such share of Series A Preferred.

C. Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. Except as otherwise provided in Section 4(d)(i)(B), in the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue of Options or Convertible Securities or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(d)(i)(E) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(aa) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(bb) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(I) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually based upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for other issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(cc) no readjustment pursuant to clause (bb) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted

from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(dd) in the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options.

D. Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(i)(C)) without consideration or for a consideration per share less than the Conversion Price in effect on the date of and immediately prior to such issue, then and in such event such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) 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 issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued 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 issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 4(d)(i), all shares of Common Stock issuable upon conversion of outstanding Options, Convertible Securities and Series A Preferred shall not be deemed to be outstanding.

E. Determination of Consideration. For purposes of this Section 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(aa) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(bb) insofar as it consists of services or property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(cc) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (aa) and (bb) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(i)(C), relating to Options and Convertible Securities, shall be determined by dividing

(aa) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise in full of such Options or the conversion or exchange in full of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise in full of such Options for Convertible Securities and the conversion or exchange in full of such Convertible Securities, by

(bb) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise in full of such Options or the conversion or exchange in full of such Convertible Securities.

(ii) Adjustments for Subdivisions, Combinations or Consolidations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. 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 Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(iii) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution payable in securities of the Corporation other than shares of Common Stock and other than as otherwise adjusted in this Section 4, then and in each such event provision shall be made so that the holders of Series A Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their shares of Series A Preferred been converted into Common Stock on the date of such event and had they thereafter during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Series A Preferred.

(iv) Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Series A Preferred shall be changed into the same or a different number of shares of any other classes or stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision, combination or consolidation of shares provided for above), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series A Preferred shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such shares of Series A Preferred immediately before that change.

(e) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, 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 the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 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 Series A Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred, 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 which at the time would be received upon the conversion of such holder's shares of Series A Preferred.

5. Protective Provisions. So long as at least 540,000 shares of Series A Preferred remains outstanding (appropriately adjusted for stock splits, consolidations and the like), the Corporation shall not, without the vote or written consent of not less than a majority of such outstanding shares voting as a separate class:

- (a) Alter or change the rights, preferences or privileges of the Series A Preferred;
- (b) Increase the authorized number of shares of Series A Preferred; or
- (c) Create or issue any new shares or any other securities convertible into equity securities of the Corporation having a preference senior to the preference of the Series A Preferred with respect to dividends or liquidation.

6. Status of Converted Stock. In case any shares of Series A Preferred shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. From time to time, the Articles of Incorporation of this Corporation shall be appropriately revised to reflect the corresponding reduction in the Corporation's authorized capital stock.

SIXTH. In furtherance and not in limitation of the powers conferred by the laws of Florida, each of the Board of Directors and shareholders is expressly authorized and empowered to make, alter, amend and repeal the Bylaws of the Corporation in any respect not inconsistent with the laws of the State of Florida or with these Amended and Restated Articles of Incorporation. The shareholders of the Corporation may amend or adopt a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by law.

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

EIGHTH. A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 607.0834 of the Florida Business Corporation Act, as the same exists or hereafter may be amended, (iv) for violation of a criminal law, unless the director had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful, or (v) for any transaction from which the director derived an improper personal benefit.

If the Florida Business Corporation Act hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of the Corporation's directors shall be eliminated or limited to the full extent authorized by the Florida Business Corporation Act, as amended.

The Corporation shall indemnify any officer or director, or any former officer or director, of the Corporation to the fullest extent permitted by law.

Any repeal or modification of this Article shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

NINTH. The Corporation reserves the right to amend or repeal any provision contained in these Amended and Restated Articles of Incorporation, or any amendment thereto, and any right conferred upon the shareholders is subject to this reservation.

Such amendment and restatement of the Articles of Incorporation has been duly authorized and directed by Unanimous Written Consent of the Board of Directors of the Corporation, dated January 20, 1998, and by Written Consent of the Shareholders of the Corporation, dated January 20, 1998, which shareholders' consent was signed by the holders of a majority of the outstanding capital stock of the Corporation and was sufficient for the approval of the amendment and restatement. Such amendment and restatement of the Articles of Incorporation supersede the original Articles of Incorporation of the Corporation and all amendments to them.

IN WITNESS WHEREOF, these Amended and Restated Articles of Incorporation have been executed by the undersigned in his capacity as aforesaid as of the 20~~th~~ day of January, 1998, on behalf of the Corporation.


Mark Lubin, Chief Executive Officer

MIAMI/TAYLORM/921136/jqr4021.DOC/1/15/98

CERTIFICATE OF DESIGNATION OF REGISTERED AGENT/REGISTERED OFFICE

PURSUANT TO THE PROVISIONS OF SECTION 607.0501 or 617.0501, FLORIDA STATUTES, THE UNDERSIGNED CORPORATION, ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA, SUBMITS THE FOLLOWING STATEMENT IN DESIGNATING THE REGISTERED OFFICE/REGISTERED AGENT, IN THE STATE OF FLORIDA.

1. The name of the corporation is: UPSCALE WATER TECHNOLOGIES, INC.

2. The name and address of the registered agent and office is:

CORPORATION SERVICE COMPANY

(Name)

1201 HAYS STREET

(P.O. Box not acceptable)

TALLAHASSEE, FLORIDA 32301

(City/State/Zip)

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Karen B. Rozar

(Signature)

Karen B. Rozar, As Its Agent

1-22-98

DIVISION OF CORPORATIONS, P.O. BOX 6327, TALLAHASSEE, FL