

06/27/2003

12:20

CORPDIRECT - 2050380

NO.428 001

Division of Corporations

Page 1 of 1

**P94000055261**

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.

(((H03000222050 4)))

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 : CORPORATE & CRIMINAL RESEARCH SERVICES  
Account Number : 110450000714  
Phone : (850) 222-1173  
Fax Number : (850) 224-1640

RECEIVED  
03 JUN 27 PM 1:40  
DIVISION OF CORPORATIONS

0638. 17373

**BASIC AMENDMENT****RETAIL INVESTMENT CONCEPTS, INC.**

Certificate of Status	0
Certified Copy	1
Page Count	16
Estimated Charge	\$43.75

03 JUN 27 PM 3:57  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILED

At Restated  
ART. 58

Electronic Filing Menu

Corporate Filing

Public Access Help

H03000222050 4  
Execution Copy

**FIFTH AMENDED AND RESTATED  
ARTICLES OF INCORPORATION OF  
RETAIL INVESTMENT CONCEPTS, INC.**

*Pursuant to the provisions of §§ 607.1006 and 607.1007 of the Florida Business Corporation Act, the undersigned corporation, pursuant to a resolution duly adopted by its board of directors and with the approval of the stockholders, hereby adopts the following Amended and Restated Articles of Incorporation including an amendment pursuant to Fla. State. § 607.0602 relating to the adoption by the board of directors of a series of shares and the establishment of the relative rights and preferences thereof.*

**ARTICLE I  
NAME**

The name of this Corporation shall be:

RETAIL INVESTMENT CONCEPTS, INC.

**ARTICLE II  
DURATION**

This Corporation's existence began on July 25, 1994 and shall continue until termination by the act of directors or otherwise by law.

**ARTICLE III  
PURPOSE**

This Corporation may engage in any activity or business permitted under the laws of the United States, the State of Florida, and any foreign jurisdiction in which it qualifies to do business.

**ARTICLE IV  
CAPITAL STOCK**

This Corporation is authorized to issue:

A. Two hundred ten million (210,000,000) shares of (US \$.01) par value per share common stock, to be known, as "Common Stock".

Subject to first obtaining a Special Preferred Approval, the Board of Directors shall have the authority to increase or decrease the amount of Common Stock authorized by the Corporation, but in no event shall the number of authorized shares of Common Stock be less than the greater of the number of shares of Common Stock then outstanding or that number of shares of Common Stock which, when added to the number of the

FILED  
03 JUN 27 PM 3:57  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

H03000222050 4

issued and outstanding shares of Common Stock, is required to permit the full conversion of any and all classes of convertible stock then issued and outstanding, plus the issuance of any shares of Common Stock held in treasury, the completion of the issuance of subscribed but unissued shares of Common Stock and the issuance of shares designated to be issued under any qualified or non-qualified stock plan of the Corporation.

Except as may be otherwise provided in the terms of these Articles of Incorporation, in the provisions of the Fourth Amended and Restated Voting and Co-Sale Agreement, dated as of June 27, 2003, among the Corporation and certain of its stockholders (the "Voting Agreement"), or by law, holders of Common Stock shall vote together with all other classes or series of stock of the Corporation as a single class on all actions to be taken by the shareholders of the Corporation. Holders of Common Stock of the Corporation shall be entitled to vote that number of shares which shall equal the number of shares of Common Stock which such person holds on matters submitted to a vote at a meeting of stockholders.

B. One hundred forty-five million (145,000,000) shares of (US \$.01) par value per share preferred stock to be designated and known as the "Series E-1 Preferred Stock", fifty-five million (55,000,000) shares of (US \$.01) par value per share preferred stock to be designated and known as the "Series E-2 Preferred Stock", and six million seven hundred fifty (6,750,000) shares of (US \$.01) par value per share preferred stock to be designated and known as the "Series E-3 Preferred Stock". The Series E-1 Preferred Stock, the Series E-2 Preferred Stock, and the Series E-3 Preferred Stock are sometimes referred to collectively as the "Preferred Stock". The voting powers, designations, preferences, rights, qualifications, limitations and restrictions with respect to the Preferred Stock shall be as follows:

1. Voting. (a) General. Except as may be otherwise provided in these Articles of Incorporation, in the provisions of the Voting Agreement, or by law, the Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock into which the Preferred Stock held by such holder is convertible (rounded to the nearest whole share).

2. Distribution Preference. (a) Subject to Article IV(B)(3), the Corporation may make distributions of any type (whether dividends, returns of capital, liquidation, Non-Cash Distributions or otherwise). In the case of a Non-Cash Distribution, the value of the asset or property will be the fair market value of such asset or property (as determined by a majority of the Board, in consultation, if appropriate, with qualified experts or advisors), less 15% of such fair market value. Such distributions shall be made in the following order of priority:

H03000222050 4

FIRST, to the holders of Series E-1 Preferred Stock, an amount per share up to the Series E-1 Distribution Preference (adjusted as set forth in Article IV(B)(3);

SECOND, to the extent available, to the holders of Series E-2 Preferred Stock an amount per share up to the Series E-2 Distribution Preference (adjusted as set forth in Article IV(B)(3); and

THIRD, to the extent available, to all holders of Preferred and Common Stock of the Corporation on a share for share basis.

(b) From and after such time as the Corporation shall have distributed an amount equal to the aggregate Preferred Distribution Preference, the Corporation shall make all distributions in accordance with clause THIRD above.

3. Special Distribution. The Corporation shall not, and shall not permit its Subsidiaries to, enter into any Hungarian Transaction valued at less than \$12,000,000 except with prior Special Preferred Approval. If there is a permitted Hungarian Transaction prior to May 31, 2004 for which the Corporation receives proceeds of less than \$12,000,000 but more than \$10,000,000, or a Hungarian Transaction on or after May 31, 2004 for which the Corporation receives proceeds of less than \$10,000,000 then the proceeds of such sale shall be distributed as set forth in Article IV(B)(2) hereof. If there is a Hungarian Transaction prior to May 31, 2004 for which the Corporation receives proceeds of \$10,000,000 or less, then 50% of the proceeds of such sale, up to an amount equal to the aggregate Series E-1 Distribution Preference, shall be distributed as a special per share dividend ratably to the holders of Series E-1 Preferred Stock and 50% of the proceeds of such sale, up to an amount equal to the aggregate Series E-2 Distribution Preference, shall be distributed as a special dividend ratably (on a share for share basis) to the holders of Series E-2 Preferred Stock, provided that the amounts distributable pursuant to this Article IV(B)(3) will be reduced (x) in the case of any share of Series E-1 Preferred Stock, by amounts distributed as Series E-1 Distribution Preference pursuant to Article IV(B)(2) and (y) in the case of any share of Series E-2 Preferred Stock, by amounts distributed as Series E-2 Distribution Preference with respect to such share pursuant to Article IV(B)(2). Any proceeds of the Hungarian Transaction that are not distributed after application of this Article IV(B)(3) shall be distributed in accordance with Article IV(B)(2). The amounts distributable pursuant to Article IV(B)(2) shall be reduced (x) in the case of any share of Series E-1 Preferred Stock, by amounts distributed with respect to such share pursuant to this Article IV(B)(3), as Series E-1 Distribution Preference and (y) in the case of any share of Series E-2 Preferred Stock, by amounts distributed pursuant to this Article IV(B)(3) as Series E-2 Distribution Preference.

H03000222050 4

#### 4. Restrictions.

(a) Except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law, by the Voting Agreement or by these Articles of Incorporation, and in addition to any other vote required by law or these Articles of Incorporation, without prior Special Preferred Approval, the Corporation will not:

(i) Create or authorize the creation of any additional class or series of shares of stock unless the same ranks junior to the Preferred Stock as to the distribution of assets upon a Liquidation Event, or increase the authorized amount of the Preferred Stock or increase the authorized amount of any additional class or series of shares of stock, or create or authorize any obligation or security convertible into shares of Preferred Stock or into shares of any other class or series of stock, whether any such creation, authorization or increase shall be by means of amendment to the Articles of Incorporation or by merger, consolidation or otherwise;

(ii) Consent to any Liquidation Event or Partial Liquidation Event;

(iii) File voluntary bankruptcy;

(iv) Amend, alter or repeal its Articles of Incorporation or By-laws;

(v) Purchase or set aside any sums for the purchase of, or pay any dividend or make any distribution on, any shares of stock other than the Series E-1 and Series E-2 Preferred Stock; or

(vi) Redeem or otherwise acquire any shares of Preferred Stock except pursuant to a purchase offer made based on the order of preference in Article IV (B)(2) to all holders of the shares of Preferred Stock on the basis of the aggregate number of outstanding shares of Preferred Stock then held by each such holder.

(b) The Take-Along Rights, the Drag-Along Rights, the Rights of First Refusal, and the Rights of First Offer set forth in the Voting Agreement, as may be amended from time to time in accordance with its terms, are hereby incorporated by reference and made applicable to all shares of the capital stock of the Corporation whether or not the holder of such shares is a party to such agreement. The Corporation shall keep a copy of such agreement at its offices, and shall provide a copy to any stockholder that requests in writing to receive a copy.

5. Conversions. The holders of shares of Preferred Stock shall have the following conversion rights:

H03000222050 4

(a) Right to Convert. Subject to the terms and conditions of this Article IV (B)(5), the holder of any share or shares of Preferred Stock shall have the right, at its option at any time, to convert any such shares of Preferred Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Preferred Stock so to be converted by one (1), and (ii) dividing the resulting product by the conversion ratio of one (1) per share or, in case an adjustment of such ratio has taken place pursuant to the further provisions of this Article (IV)(B)(5), then by the conversion ratio as last adjusted and in effect at the date any share or shares of Preferred Stock are surrendered for conversion (such ratio, the "Conversion Ratio"). Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of shares of Preferred Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued.

(b) Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in Article IV(B)(5)(a) and surrender of the certificate or certificates for the share or shares of Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock, issuable upon the conversion of such share or shares of Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Conversion Ratio shall be determined as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock, shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

(c) Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of Preferred Stock into Common Stock, and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock, issued upon such conversion. At the time of each conversion, the Corporation shall pay in cash an amount equal to all accrued and unpaid dividends for the Preferred Stock and Common Stock. If the number of shares of Preferred Stock represented by the certificate or certificates surrendered pursuant to Article IV(B)(5)(a) exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or

H03000222050 4

certificates for the number of shares of Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock, would, except for the provisions of the first sentence of this Article IV(B)(5)(c), be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Preferred Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Corporation.

(d) Subdivision or Combination of Common Stock. If the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock, into a greater number of shares, the Conversion Ratio in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, if the outstanding shares of Common Stock, shall be combined into a smaller number of shares, the Conversion Ratio in effect immediately prior to such combination shall be proportionately increased.

(e) Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock, immediately theretofore receivable upon the conversion of such share or shares of Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock, equal to the number of shares of such Common Stock, immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Ratio) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

(f) Notice of Adjustment. Upon any adjustment of the Conversion Ratio, then and in each such case the Corporation shall give written notice thereof, by delivery in person against receipt, certified or registered mail, return receipt requested, telecopier or telex with electronic confirmation of transmission, addressed to each holder of shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Conversion Ratio resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

H03000222050 4

(g) Other Notices. In case at any time:

(i) the Corporation shall declare any dividend upon its Common Stock or Preferred Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(ii) the Corporation shall offer for subscription pro rata to the holders of its Common Stock or Preferred Stock any additional shares of stock of any class or other rights;

(iii) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into another entity or entities, or a sale, lease, abandonment, transfer or other disposition of all or substantially all its assets; or

(iv) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, the Corporation shall give, by delivery in person against receipt, certified or registered mail, return receipt requested, telecopier or telex with electronic confirmation of receipt, addressed to each holder of any shares of Preferred Stock or Common Stock at the address of such holder as shown on the books of the Corporation, (a) at least twenty (20) business days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, and (b) in the case of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, at least twenty (20) business days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock, shall be entitled thereto and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock and Preferred Stock, as the case may be, shall be entitled to exchange their Common Stock and Preferred Stock, as the case may be, for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, as the case may be.

(h) Stock to Be Reserved. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so



H03000222050 4

issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock, is at all times equal to or less than the Conversion Ratio in effect at the time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed. The Corporation will not take any action which results in any adjustment of the Conversion Ratio if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Preferred Stock would exceed the total number of shares of Common Stock then authorized by these Articles of Incorporation. Provided, however, that in such an event, the Corporation will forthwith take 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 purposes.

(i) No Reissuance of Preferred Stock. Shares of Preferred Stock which are converted into shares of Common Stock, as provided herein shall be retired and shall not be reissued.

(j) Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Preferred Stock which is being converted.

(k) Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion of such Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

(l) Definition of Common Stock. As used in this Article IV(B)(5), the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, par value \$0.01 per share, as constituted on the date of filing of these terms of the Preferred Stock, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall not be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

H03000222050 4

(m) Mandatory Conversion. Notwithstanding any provision to the contrary contained herein, if at any time following the payment in full of the Series E-1 Distribution Preference and the Series E-2 Distribution Preference in accordance with Article IV(B)(2), (i) the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock in which the aggregate price paid for such shares by the public shall be at least \$35,000,000, or (ii) with prior Special Preferred Approval, effective upon (x) the closing of the sale of such shares by the Corporation pursuant to such public offering, or (y) immediately following such Special Preferred Approval, as the case may be, and without any further required action on the part of such holders or the Corporation, all outstanding shares of Preferred Stock shall automatically convert to shares of Common Stock, on the terms set forth in this Article IV(B)(5). Holders of shares of Preferred Stock so converted may deliver to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to such holders) during its usual business hours, the certificate or certificates for the shares so converted. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares to which such holder may be entitled pursuant to Article IV(B)(5)(c). Until such time as a holder of shares of Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.

6. Definitions. For purposes of these Articles of Incorporation,

"Affiliate" means any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Corporation; provided, however, that notwithstanding the foregoing, the Corporation shall not be considered an Affiliate of the Stockholders and the Stockholders shall not be considered Affiliates of the Corporation. For the purposes of this definition, "control," when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Fully Converted Basis" means, as of any date of determination, the number of shares of Common Stock that would be issued in respect of a specified number of shares of Preferred Stock or other securities upon conversion, exercise or exchange of such Preferred Stock or other securities that are convertible, exercisable or exchangeable into or for (whether directly or indirectly) shares of Common Stock.

"Hungarian Operations" means Elso Iroda Superstore Kft, the Corporation's subsidiary in Hungary, its affiliates, and its subsidiaries.

H03000222050 4

"Hungarian Transaction" means any action by the Corporation or by the Hungarian Operations, including, without limitation, the sale of substantial assets or a substantial amount of shares, the liquidation, the dissolution or any business combination, in each case, of the Hungarian Operations, the proceeds of which may be distributed to the Corporation by the Hungarian Operations.

"Liquidation Event" means any of the following events:

- (a) The acquisition of a majority of voting stock of the Corporation through the consolidation or merger of the Corporation into or with any other entity or entities which results in the exchange of outstanding shares of the Corporation for securities or other consideration issued or paid or caused to be issued or paid by any such entity or affiliate thereof (other than a merger to reincorporate the Corporation in a different jurisdiction);
- (b) The sale, lease, abandonment, transfer or other disposition by the Corporation of all or substantially all of its assets;
- (c) Any issuance or sale of the capital stock of the Corporation by any party which results in a change of control of the Corporation such that after such issuance or sale, the holders of the capital stock of the Corporation on June 27, 2003 own less than 50.1% of the capital stock of the Corporation (on a Fully Converted Basis); or
- (d) The voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

"Master Agreement" means the Master Purchase and Exchange Agreement, dated as of June 27, 2003, among the Corporation and several purchasers.

"Non-Cash Distributions" means distributions of assets or property other than cash.

"Partial Liquidation Event" means the following:

- (a) The acquisition of a majority of voting stock of an Affiliate through the consolidation or merger of an Affiliate into or with any other entity or entities which results in the exchange of outstanding shares of the Affiliate for securities or other consideration issued or paid or caused to be issued or paid by any such entity or affiliate thereof (other than a merger to reincorporate the Affiliate in a different jurisdiction, or the merger or consolidation of existing subsidiaries into each other or into the Corporation);
- (b) The sale, lease, abandonment, transfer or other disposition by an Affiliate of all or substantially all of its assets;

H03000222050 4

(c) Any issuance or sale of the capital stock of an Affiliate by any party which results in a change of control of the Affiliate such that after such issuance or sale, the holders of the capital stock of such Affiliate on June 27, 2003 own less than 50.1% of the capital stock of the Affiliate (on a Fully Converted Basis); or

(d) The voluntary or involuntary liquidation, dissolution or winding up of an Affiliate.

"Person" means an individual, corporation, trust, partnership, joint venture, unincorporated organization, government agency or any agency or political subdivision thereof or other entity.

"Preferred Distribution Preference" means, a per share amount, equal to the Series E-1 Distribution Preference and Series E-2 Distribution Preference.

"Series E-1 Distribution Preference" means, as of any date of determination, a per share amount equal to: (i) the balance of (A) 125% of any amounts invested in the Corporation pursuant to Sections 1.01(b) and 1.04 of the Master Agreement less (B) any prior distributions made by the Corporation pursuant to Article IV(B)(2) hereof or Article IV(B)(3) hereof in respect to the Series E-1 Distribution Preference divided by (ii) the number of the then-outstanding shares of Series E-1 Preferred Stock.

"Series E-2 Distribution Preference" means, as of any date of determination, a per share amount equal to: (i) the balance of (A) \$7,000,000 less (B) any prior distributions made by the Corporation pursuant to Article IV(B)(2) hereof or Article IV(B)(3) hereof in respect to the Series E-2 Distribution Preference divided by (ii) the number of the then-outstanding shares of Series E-2 Preferred Stock.

"Special Preferred Approval" means an affirmative vote of holders, at a meeting specifically called for such purpose or by written consent, equal to at least 75% of issued and outstanding Series E-1 Preferred Stock and Series E-2 Preferred Stock, voting as a single class with each holder entitled to one vote per share, provided that at such time as there is no Series E-1 Preferred Stock issued and outstanding, then a Special Preferred Approval shall be obtained on the affirmative vote, at a meeting specifically called for such purpose or by written consent, of holders of shares representing at least 75% of the sum of (i) the issued and outstanding Common Stock and (ii) that number of shares of Common Stock into which classes or series of stock convertible into Common Stock may be converted at such time, voting as a single class on a Fully Converted Basis, whether or not converted.

"Stockholders" means the Preferred Stockholders and the Common Stockholders.

H03000222050 4

**ARTICLE V  
PRINCIPAL OFFICE OF BUSINESS**

The principal office and address of business of the Corporation are:

2333 Ponce de Leon Boulevard, Suite 600  
Coral Gables, Florida 33134

**ARTICLE VI  
REGISTERED OFFICE AND AGENT**

The street address of the registered office of this Corporation is:

2333 Ponce de Leon Boulevard, Suite 600  
Coral Gables, Florida 33134

The name of the registered agent available for services of process at that address is Alan H. Potamkin.

**ARTICLE VII  
BOARD OF DIRECTORS**

The Corporation shall have at least three (3) Directors. The number of Directors may be increased or decreased from time to time in accordance with the By-Laws and the Voting Agreement but shall never be less than three (3) and without prior Special Preferred Approval, shall never be more than five (5).

Subject to Article IV(B)(4) hereof and the provisions of the Voting Agreement, the Board of Directors shall have the authority to establish the preferences, limitations, and relative rights of any class of shares as authorized in these Articles of Incorporation before the issuance of any shares of that class; or one or more series within a class before the issuance of any shares of that series.

The Corporation shall indemnify and hold harmless its officers and directors to the fullest extent permitted by Florida Law either now or hereafter.

**ARTICLE VIII  
BY-LAWS**

The power to adopt, alter, amend or repeal By-laws shall be vested in the Board of Directors subject to the restrictions detailed in the terms and provisions of Article IV above entitled "CAPITAL STOCK".

H03000222050 4

These Amended and Restated Articles of Incorporation were duly approved by the unanimous written consent of the board of directors and stockholders of the Corporation in accordance with Fla. Stat. §§ 607.0602, 607.1003, 607.1006 and 607.1007 on the 27th day of June, 2003.

The foregoing Fifth Amended and Restated Articles of Incorporation restate and integrate and amend in accordance with §607.1006 of the Florida Statutes the provisions of the Articles of Incorporation as theretofore amended.

#### ARTICLE IX AMENDMENTS

These Articles of Incorporation may not be modified, amended, changed, discharged or terminated unless approved in writing by both (a) an instrument in writing, signed by stockholders holding at least 75% of the outstanding shares of capital stock of the Corporation (calculated on a Fully Converted Basis, whether or not converted) and (b) a Special Preferred Approval; provided that if any such action would have a material discriminatory disproportionate adverse impact on any stockholder when compared to other stockholders of the same class, such action would require the express approval of the affected stockholder; and provided further that any amendment to this Article IX would require the consent of the holders of 95% of the then-outstanding shares of the Corporation's capital stock (calculated on a Fully Converted Basis, whether or not converted). For purposes of this Article IX, outstanding convertible promissory notes or warrants of the Corporation held by any stockholder, if any, shall be treated as converted or exercised.

#### ARTICLE X LIABILITY OF DIRECTORS

No director of the Corporation shall be personally liable for monetary damages to the Corporation or any other person for any statement, vote, decision, action, or failure to act, regarding corporate management or policy, by such director, provided that nothing contained in this Article shall eliminate or limit the liability of a director for any breach or failure to perform such director's duties as a director constituting (i) a violation of the criminal law, unless such director had reasonable cause to believe that such conduct was lawful or had no reasonable cause to believe that such conduct was unlawful, (ii) any transaction from which the director derived an improper personal benefit, either directly or indirectly, (iii) a circumstance under which Section 607.0834 of the Florida Business Corporation Act is applicable, (iv) in a proceeding by or in the right of the Corporation or a shareholder, conscious disregard for the best interest of the Corporation, or willful misconduct, or (v) in a proceeding by or in the right of someone other than the Corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or

H03000222050 4

with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property.

H03000222050 4

IN WITNESS WHEREOF, the undersigned has executed these Fifth Amended and Restated Articles of Incorporation this 27th day of June, 2003 and such amended Articles shall be effective as of noon on the 27th day of June, 2003.

RETAIL INVESTMENT CONCEPTS,  
INC.

By: \_\_\_\_\_  
Name:  
Title:



H03000222050 4

IN WITNESS WHEREOF, the undersigned has executed these Fifth Amended and Restated Articles of Incorporation this 27<sup>th</sup> day of June, 2003 and such amended Articles shall be effective as of noon on the 27<sup>th</sup> day of June, 2003.

RETAIL INVESTMENT CONCEPTS,  
INC.

By: 

Name:

Title:

*President of RIC*

H03000222050 4