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FILE NO. 39297.98573

July 23, 1998

Florida Dept. of State
Division of Corporations
409 E. Gaines Street
Tallahassee, FL 32399

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-07/24/98--01071-016
*****35.00 *****35.00

Re: By Owner Mortgage Company

Dear Sir/Madam:

Enclosed for filing are the original Articles of Restatement to Articles of Incorporation of By Owner Mortgage Company, and our firm check in the amount of \$35.00 for the filing fee.

Please return all correspondence concerning this matter to the following:

Philip M. Shasteen, Esq.
Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A.
100 North Tampa Street, Suite 1800
Tampa, FL 33602

Please call me if you have any questions. Thank you.

Very truly yours,

Linda M. Werner

Linda M. Werner
Legal Assistant

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0027350.01

FILED
98 JUL 24 AM 10:31
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

*Restated
7-24-98
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**ARTICLES OF RESTATEMENT
OF THE
ARTICLES OF INCORPORATION
OF
BY OWNER MORTGAGE COMPANY**

FILED
98 JUL 24 AM 10:31
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

By Owner Mortgage Company (the "Corporation"), pursuant to the provisions of Section 607.1007, Florida Statutes, hereby adopts these Articles of Restatement to the Articles of Incorporation which amend and restate the Corporation's Articles of Incorporation as follows:

**ARTICLE I
NAME**

The name of the Corporation shall be By Owner Mortgage Company.

**ARTICLE II
AUTHORIZED CAPITAL**

The Corporation is hereby authorized to issue a total of Twenty-Two Million (22,000,000) shares of capital stock which shall be subdivided into classes as follows:

- (a) Fifteen Million (15,000,000) shares of the Corporation's capital stock shall be denominated as Common Stock, have a par value of one-tenth of one cent (\$0.001) per share, and have the rights, powers and preferences set forth in this paragraph. The Holders of Common Stock shall share ratably, with all other classes of common equity, in any dividends that may, from time to time, be declared by the Board of Directors. No dividends may be paid with respect to Corporation's Common Stock, however, until dividend distributions to the holders of Preferred Stock, if any, have been paid in accordance with the certificate or certificates of designation relating to such Preferred Stock. The holders of Common Stock shall share ratably, with all other classes of common equity, in any assets of the Corporation that are available for distribution to the holders of common equity securities of the Corporation upon the dissolution or liquidation of the Corporation. The holders of Common Stock shall be entitled to cast one vote per share on all matters that are submitted for a vote of the stockholders. There are no redemption or sinking fund provisions that are applicable to the Common Stock of the Corporation. Subject only to the requirements of the General Corporation Law of Florida and the foregoing limits, the Board of Directors is expressly authorized to issue shares of Common Stock without stockholder approval, at any time and from time to time, to such persons and for

such consideration as the Board of Directors shall deem appropriate under the circumstances. Notwithstanding the foregoing, and with the sole exception of shares issued pursuant to those of the Corporation's stock option and other employee benefit plans which have been approved by the stockholders entitled or required by law to vote thereon, no shares of Common Stock shall be issued or sold to any officer or director of the Corporation, or any stockholder who directly or indirectly owns more than 10% of the issued and outstanding voting stock of the Corporation, or any affiliate of such a person, without the affirmative vote of a majority in interest of the disinterested stockholders of the Corporation. Effective August 26, 1997, the 4,500 issued and outstanding shares of the \$1.00 par value Common Stock of the Corporation shall be subdivided into 4,500,000 shares of the \$0.001 par value Common Stock of the Corporation without any further action by the holders thereof.

- (b) Five Million (5,000,000) shares of the Corporation's capital stock shall be denominated as Class A Common Stock, have a par value of one-tenth of one cent (\$0.001) per share, and have all of the rights, powers, and preferences and be subject to all of the limitations relating to shares of the Corporation's Common Stock set forth in paragraph (a) of this Article II. Notwithstanding the generality of the foregoing, the holders of Class A Common Stock shall have and enjoy the following additional preferential and preemptive rights:
 - (i) The Class A Common Stock shall be convertible into shares of the Corporation's Common Stock, on a share-for-share basis, at any time at the option of the holder, and shall be automatically converted into Common Stock without further action by the holder if, as and when the Corporation files with the Securities and Exchange Commission or distributes to stockholders or creditors financial statements prepared in accordance with generally accepted accounting principles that reflect a net stockholders' equity of \$ 10,000,000 or more.
 - (ii) In connection with any public offering by the Corporation of Common Stock or Class A Common Stock that is intended for sale to the general public for cash and conducted pursuant to Regulation A promulgated under Section 3(b) of the Securities Act of 1933, as amended (the "Act"), or registered pursuant to Section 5 of such Act, the holders of Class A Common Stock shall have and enjoy a preemptive right to purchase, for each share of Class A Common Stock held of record, one share of Common Stock or Class A Common Stock, as the case may be, at a per share price equal to 70% of the public offering price of such shares, provided, however, that the holders of Class A Common Stock, as a class, shall not be entitled to exercise preemptive rights that represent in the aggregate more than 50% of the total cash proceeds to be realized by the Corporation from any offering of Common Stock or Class A Common Stock.

- (iii) If, in connection with a subsequent public offering of Common Stock or Class A Common Stock by the Corporation, the holders of Class A Stock, as a class, attempt to exercise preemptive rights that represent in the aggregate more than 50% of the total cash proceeds to be realized by the Corporation, then the preemptive rights of all exercising holders shall be proportionally reduced so that the total amount paid by the holders of Class A Common Stock does not exceed 50% of the total cash proceeds to be realized by the Corporation in connection with the offering. No fractional shares shall be issued in connection with any proportional reduction of preemptive rights and all calculations that would result in the sale of a fractional share shall be rounded down to the nearest whole number.
 - (iv) In connection with any proposed public offering of Common Stock or Class A Common Stock by the Corporation which would give rise to the preemptive rights specified in this paragraph (b), the Corporation shall, not less than 15 days prior to the anticipated effective date of such offering, provide each holder of Class A Common Stock with a preliminary prospectus relating to the offering, together with a written notice describing the preemptive rights of holders of Class A Common Stock and specifying the procedures to be followed by such holders in connection with the exercise of their preemptive rights. Such notice may also specify a period of not less than 5 nor more than 20 days after the effective date of the offering during which preemptive rights must be exercised by holders of Class A Common Stock and any preemptive rights that are not exercised within the period specified in such a notice will be deemed to have been waived by the non-exercising holder.
 - (v) Notwithstanding any other provision of this paragraph (b), holders of Class A Common Stock shall not have any preemptive right to purchase any shares of Common Stock or Class A Common Stock that are offered by the Corporation on a private placement basis; any shares of Preferred Stock or other securities of the Corporation that are convertible into shares of Common Stock or Class A Common Stock; any shares of Common Stock or Class A Common Stock that are registered for sale to employees or consultants under any present or future compensatory stock plan adopted by the Corporation; or any shares of Common Stock or Class A Common Stock that are registered for issuance to third-parties in connection with any business combination transaction
- (c) Two Million (2,000,000) shares of the Corporation's authorized capital stock shall be denominated as Preferred Stock, par value of one-tenth of one cent (\$0.001) per share. Shares of Preferred Stock may be issued from time to time in one or more series as the Board of Directors, by resolution or resolutions, may from time

to time determine, each of said series to be distinctively designated. The voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions thereof, if any, of each such series of Preferred Stock may differ from those of any and all other series of Preferred Stock at any time outstanding, and the Board of Directors is hereby expressly granted authority to fix or alter, by resolution or resolutions, the designation, number, voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, of each such series of Preferred Stock, including, but without limiting the generality of the foregoing, the following:

- (i) The distinctive designation of, and the number of shares of Preferred Stock that shall constitute, each series of Preferred Stock, which number (except as otherwise provided by the Board of Directors in the resolution establishing such series) may be increased or decreased (but not below the number of shares of such series then outstanding) from time to time by the Board of Directors without prior approval of the holders of such series;
- (ii) The rights in respect of dividends, if any, of such series of Preferred Stock, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes or any other series of the same or other class or classes of capital stock of the Corporation, and whether such dividends shall be cumulative or non-cumulative;
- (iii) The right, if any, of the holders of such series of Preferred Stock to convert the same into, or exchange the same for, shares of any other class or classes or of any other series of the same or any other class or classes of capital stock of the Corporation and the terms and conditions of such conversion or exchange, including, without limitation, whether or not the number of shares of such other class or series into which shares of such series may be converted or exchanged shall be adjusted in the event of any stock split, stock dividend, subdivision, combination, reclassification or other transaction or series of transactions affecting the class or series into which such series of Preferred Stock may be converted or exchanged;
- (iv) Whether or not shares of such series of Preferred Stock shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, shares of such series of Preferred Stock may be redeemed;
- (v) The rights, if any, of the holder of such series of Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or in the event of any merger or consolidation of or sale of assets by the Corporation;

- (vi) The terms of sinking fund or redemption or repurchase account, if any, to be provided for shares of such series of Preferred Stock;
- (vii) The voting powers, if any, of the holders of any series of Preferred Stock generally or with respect to any particular matter, which may be less than, equal to or greater than one vote per share, and which may, without limiting the generality of the foregoing, include the right, voting as a series by itself or together with the holders of any other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more Directors of the Corporation (which, without limiting the generality of the foregoing, may include a specified number or portion of the then-existing number of authorized Directorships of the Corporation, or a specified number or portion of Directorships in addition to the then-existing number of authorized Directorships of the Corporation), generally or under such specific circumstances and on such conditions, as shall be provided in the resolution or resolutions of the Board of Directors adopted pursuant hereto; and
- (viii) Such other powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as the Board of Directors shall determine.

Notwithstanding the foregoing, and with the sole exception of shares issued pursuant to those of the Corporation's stock option and other employee benefit plans which have been approved by the stockholders entitled or required by law to vote thereon, no shares of Preferred Stock shall be issued or sold to any officer or director of the Corporation, or any stockholder who directly or indirectly owns more than 10% of the issued and outstanding voting stock of the Corporation, or any affiliate of such a person, without the affirmative vote of a majority in interest of the disinterested stockholders of the Corporation. Upon the creation of any new class or series of Preferred Stock of the Corporation, the Board of Directors shall prepare and file with the records of the Corporation a Certificate setting forth the rights and preferences of such class or series of Preferred Stock, which shall be deemed an amendment to these Restated Articles of Incorporation and shall not require the consent of any stockholder.

- (c) In addition to the Common Stock, Class A Stock and Preferred Stock described above, the Board of Directors is authorized to cause the issuance of any other type of security (including without limitation, options, rights, warrants or appreciation rights relating to any equity or debt security of the Corporation and which may have rights or preferences junior or senior to any equity or debt security of the Corporation) from time to time on terms and conditions established in the sole and complete discretion of the Board of Directors. If and to the extent required by the Florida Business Corporation Act, upon the creation of any new class or series of additional securities of the Corporation, the Board of Directors shall prepare

and file with the records of Corporation a Certificate setting forth the rights and preferences of such class or series of additional securities of the Corporation, which Certificate shall be deemed an amendment to these Restated Articles of Incorporation and shall not require the consent of any stockholder.

- (d) Except to the extent that such rights are specifically enumerated in a Certificate setting forth the rights and preferences of a specific class or series of Preferred Stock or other securities of the Corporation, no stockholder shall have any preemptive, preferential or other right, including without limitation with respect to (i) the issuance or sale of additional Common Stock of the Corporation, (ii) the issuance or sale of additional Preferred Stock of the Corporation, (iii) the issuance of any obligation, evidence of indebtedness of the Corporation which is or may be convertible into or exchangeable for, or accompanied by any rights to receive, purchase or subscribe to, any shares of Common Stock, Preferred Stock or other securities of the Corporation, (iv) the issuance of any right of subscription to, or right to receive, any warrant or option for the purchase of any Common Stock, Preferred Stock or other securities of the Corporation, or (v) the issuance or sale of any other equity or debt securities that may be issued or sold by the Corporation from time to time.

ARTICLE III RIGHTS AND POWERS OF STOCKHOLDERS

- (a) The amount of paid-in capital with which this Corporation began business is One Thousand and no/100 Dollars (\$1,000) which has been previously paid.
- (b) Except as otherwise fixed pursuant to the provisions of Article II(b) of these Restated Articles of Incorporation relating to the rights of the holders of any one or more series of Preferred Stock to call an annual or special meeting of stockholders, special meetings of the stockholders of the Corporation may be called only by the Board of Directors or by the Board of Directors at the written request of the holders of at least fifty percent (50%) of all the shares entitled to vote at the proposed special meeting. Each such written request of the stockholders shall specify the purpose or purposes of the proposed special meeting.
- (c) Except as otherwise provided for or fixed pursuant to the provisions of Article II(b) of these Restated Articles of Incorporation relating to the rights of the holders of one or more series of Preferred Stock, no action required to be taken or that may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting unless a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of all of the shares entitled to vote with respect to the action that is the subject of the consent.

- (d) At any annual or special meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting in accordance with this Article III. To be properly brought before an annual meeting business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (c) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than 60 days nor more than 90 days prior to the meeting; provided; however, that in the event that less than 70 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the lot day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (c) the number of shares of the Corporation which are beneficially owned by the stockholder, and (d) any material interest of the stockholder in such business. To be properly brought before a special meeting of stockholders, business must have been specified in the notice of meeting (or supplement thereto) given by or at the direction of the Board of Directors. Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at any annual or special meeting except in accordance with the procedures set forth in this Article III. The Chairman of the annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Article III, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.
- (e) Only persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible for election as Directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of Directors at the meeting who complies with the notice procedures set forth in this Article III. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less

than 60 days nor more than 90 days prior to the meeting; provided, however, that in the event that less than 70 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a Director, (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) the number of shares of the Corporation which are beneficially owned by such person, and (iv) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including without limitation such persons' written consent to being named in the proxy statement as a nominee and to serving as a Director if elected); and (b) as to the stockholder giving the notice (i) the name and address, as they appear on the Corporation's books, of such stockholder and (ii) the number of shares of the Corporation which are beneficially owned by such stockholder. No person shall be eligible for election as a Director of the Corporation unless nominated in accordance with the procedures set forth in this Article III. The Chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed herein, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

ARTICLE IV DIRECTORS

- (a) The business and affairs of the Corporation shall be conducted and managed by, or under the direction of, the Board of Directors. Except as otherwise provided for or fixed pursuant to the provisions of Article II(b) of these Restated Articles of Incorporation, relating to the rights of the holders of any series of Preferred Stock to elect additional directors, the total number of directors constituting the entire Board of Directors shall be not less than three (3) nor more than nine (9), with the then-authorized number of directors being fixed from time to time solely by or pursuant to a resolution passed by the Board of Directors.
- (b) Except for such directors, if any, as are elected by the holders of any series of Preferred Stock separately as a class as provided for or fixed pursuant to the provisions of Article II(b) of these Restated Articles of Incorporation, any director of the Corporation may be removed from office only for cause and only by the affirmative vote of the holders of not less than sixty-six percent (66%) of the votes which could be cast by holders of all outstanding shares of the capital stock of the

Corporation entitled to vote generally in the election of directors, considered for this purpose as one class.

- (c) The Board of Directors shall have the power to make, adopt, alter, amend and repeal from time to time the Bylaws of this Corporation, subject to the right of the stockholders entitled to vote with respect thereto to adopt, alter, amend and repeal the Bylaws; provided, however, that Bylaws shall not be adopted, altered, amended or repealed by the stockholders of the Corporation except by the vote of the holders of not less than sixty-six percent (66%) of the votes which could be cast by holders of all outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, considered for this purpose as one class.
- (d) No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for an act or omission (or an alleged act or omission) in a director's capacity as a director, except that this Article IV(d) does not eliminate or limit the liability of a director to the extent the director is found liable for:
 - (i) a breach of a director's duty of loyalty to the Corporation or its stockholders;
 - (ii) an act or omission not in good faith which constitutes a breach of duty of the director to the Corporation, or an act or omission which involves intentional misconduct or a knowing violation of the law;
 - (iii) a transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or
 - (iv) an act or omission for which the liability of a director is expressly provided for by an applicable statute.

If Chapter 607 of the Florida Statutes or any other applicable law is amended or adopted to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by such law(s), as so amended or adopted. No amendment to or repeal of this Article IV(d) shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of the director occurring prior to such amendment or repeal.

- (e) The Board of Directors shall be divided into three classes, designated Class 1, Class 11, and Class 111. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of

Directors. Initially, Class I directors shall be elected for a one-year term, Class II directors for a two-year term and Class III directors for a three-year term. At the annual meeting of stockholders beginning in 1998, successors to the class of directors whose term expires at that annual meeting shall be elected for a three-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of that class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his term expires and until his successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Any vacancy on the Board of Directors or any newly created directorship resulting from an increase in the number of directors may be filled in any manner permitted by Chapter 607 of the Florida Statutes.

- (f) Notwithstanding the foregoing, whenever, pursuant to the provisions of Article II(b) of these Restated Articles of Incorporation, the holders of any one or more series of Preferred Stock shall have the right, voting separately as a series or together with holders of other such series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of these Restated Articles of Incorporation and the Certificate of Designations applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Article VI(f) unless expressly provided by such terms.
- (g) Directors must be at least 21 years of age and need not be stockholders. There shall be no qualifications for directors of the Corporation other than as set forth in these Restated Articles of Incorporation.

ARTICLE V

AMENDMENTS TO ARTICLES OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Restated Articles of Incorporation, in the manner now or hereafter prescribed by Chapter 607 of the Florida Statutes, and all rights conferred upon stockholders by the terms of these Restated Articles of Incorporation are granted subject to this reservation of powers.

Except as otherwise provided for or fixed pursuant to the provisions of Article II(b) of these Restated Articles of Incorporation relating to the rights of the holders of one or more series of Preferred Stock, to the extent that Chapter 607 of the Florida Statutes expressly provides for separate voting by the holders of shares of any class or series on any proposed amendment to the Corporation's Articles of Incorporation, the proposed amendment shall be adopted upon

receiving the affirmative vote of the holders of at least (i) a majority of the shares within each class or series of shares entitled to vote thereon as a class and (ii) a majority of the total outstanding shares entitled to vote thereon. Any other amendment to the Corporation's Articles of Incorporation shall be adopted upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote thereon, except as otherwise provided for or fixed pursuant to the provisions of Article II(b) of these Restated Articles of Incorporation relating to the rights of the holders of one or more series of Preferred Stock.

ARTICLE VI INDEMNIFICATION

The Corporation may indemnify and advance expenses to each person who was or is an officer, director, employee or agent of the Corporation to the fullest extent permitted by Chapter 607 of the Florida Statutes and the bylaws of the Corporation.

CERTIFICATE

In accordance with Section 607.1007(4), it is hereby certified that: The foregoing Restated Articles of Incorporation restate and amend in accordance with Section 607.1007, Florida Statutes, the provisions of the Corporation's Articles of Incorporation as theretofore amended. The Board of Directors adopted the Restated Articles of Incorporation and the amendments to the Articles of Incorporation appearing in the Restated Articles of Incorporation were duly approved by the shareholders of the Corporation in accordance with the Florida Business Corporation Act. The number of votes cast for the amendment by the shareholders was sufficient for approval.

JUNE 15
Dated ~~15~~ 15, 1998.

BY OWNER MORTGAGE COMPANY

By: *Michael Banner*
Michael Banner, President

By: *Liane Bennati*
Liane Bennati, Secretary

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