

CCRS  
103 N. MERIDIAN STREET, LOWER LEVEL  
TALLAHASSEE, FL 32301  
222-1173

FILING COVER SHEET  
ACCOUNT #

99 SEP -3 PM 1:51  
FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

CONTACT: CINDY HICKS

DATE: 9-3-99

REF. #: 0418. 8169

CORP. NAME: Cellit, Inc.

Amended &

Restated Articles Restated

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> ARTICLES OF INCORPORATION   | <input checked="" type="checkbox"/> ARTICLES OF AMENDMENT | <input type="checkbox"/> ARTICLES OF DISSOLUTION |
| <input type="checkbox"/> ANNUAL REPORT               | <input type="checkbox"/> TRADEMARK/SERVICE MARK           | <input type="checkbox"/> FICTITIOUS NAME         |
| <input type="checkbox"/> FOREIGN QUALIFICATION       | <input type="checkbox"/> LIMITED PARTNERSHIP              | <input type="checkbox"/> LIMITED LIABILITY       |
| <input type="checkbox"/> REINSTATEMENT               | <input type="checkbox"/> MERGER                           | <input type="checkbox"/> WITHDRAWAL              |
| <input type="checkbox"/> CERTIFICATE OF CANCELLATION | <input type="checkbox"/> UCC-1                            | <input type="checkbox"/> UCC-3                   |
| <input type="checkbox"/> OTHER: _____                |   |  |

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-09/03/99--01045--014  
\*\*\*\*\*70.00 \*\*\*\*\*70.00

STATE FEES PREPAID WITH CHECK# 5827 FOR \$ 70.00

AUTHORIZATION FOR ACCOUNT IF TO BE DEBITED:

COST LIMIT: \$ \_\_\_\_\_

PLEASE RETURN:

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| <input type="checkbox"/> CERTIFIED COPY        | <input type="checkbox"/> CERTIFICATE OF GOOD STANDING | <input checked="" type="checkbox"/> PLAIN STAMPED COPY |
| <input type="checkbox"/> CERTIFICATE OF STATUS |   |  |

DDK  
Examiner's Initials  
9/3/99

RECEIVED  
99 SEP -3 AM 11:48  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
CELLIT, INC.**

99 SEP -3 PM 1:51  
FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The undersigned, Alex Tellez, being the President of CellIT, Inc., a Florida Corporation (the "Corporation"), hereby states on behalf of the Corporation as follows:

1. The name of the Corporation is CellIT, Inc.
2. The Corporation was incorporated on November 27, 1996, the date on which the Articles of Incorporation were filed with the Secretary of State of the State of Florida under document number P96000097910. Amended Articles of Incorporation of the Corporation were filed with the Secretary of State of the State of Florida on July 1, 1998, Amended and Restated Articles of Incorporation were filed with the Secretary of State of the State of Florida on July 16, 1998 and Amended and Restated Articles of Incorporation were filed the Secretary of State of the State of Florida on November 23, 1998.
3. Pursuant to the requirements of Sections 607.1006 and 607.0704 of the Florida Business Corporation Act, the undersigned hereby certifies, attests and serves notice that the a majority of the outstanding shares entitled to vote or act by written consent approved this Amended and Restated Articles of Incorporation by written consent.
4. The Articles of Incorporation of the Corporation are hereby amended and restated to read in their entirety as follows:

**ARTICLE I**

The name of the corporation is CellIT, Inc. (hereinafter called the "Corporation").

**ARTICLE II**

The purpose of 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.

**ARTICLE III**

The address of the principal office and the mailing office of the Corporation is 8600 N.W. 53<sup>rd</sup> Terrace, Suite 202, Miami, Florida 33166.

**ARTICLE IV**

The street address of the registered office of the Corporation is 8600 N.W. 53<sup>rd</sup> Terrace, Suite 202, Miami, Florida 33166, and the name and address of the registered agent of the Corporation is Olga B. Velasco, 1226 Bird Road, Coral Gables, Florida 33146.

**ARTICLE V**

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 Seventy-Five Million (75,000,000) shares. Fifty Million (50,000,000) shares shall be Common Stock and Twenty-Five Million (25,000,000) shares shall be Preferred Stock. The Common Stock shall have a par value of \$0.001 per share. The Preferred Stock shall have a par value of \$0.001 per share.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, special voting rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now and hereafter permitted by the Florida Business Corporation Act. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law. Except as otherwise specifically provided in these Amended and Restated Articles of Incorporation, no vote of the holders of Preferred Stock or Common Stock shall be a prerequisite to the issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Certificate of Incorporation, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation.

Eight Million Six Hundred Thirty-Two Thousand Four Hundred Seventy-Eight (8,632,478) shares of the Preferred Stock shall be designated "Series A Preferred Stock" (hereinafter, the "Series A Preferred"). 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 *pari passu* with any payment of any dividend on Common Stock of the Corporation. The Board of Directors shall not be obligated to declare any dividends on the Series A Preferred, even if there are funds legally available therefor. If no dividends are declared in any year, the right to receive dividends as to such year shall lapse and not cumulate.

(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 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 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 (A) One Dollar and Seventeen Cents (\$1.17) per share of Series A Preferred (adjusted for any subdivisions, combinations, consolidations or stock distributions or stock dividends with respect to such shares) plus (B) all declared but unpaid dividends on each such share, if any; then

(ii) after setting apart or paying the full preferential amount due pursuant to subsection (i) above, all remaining assets available for distribution shall be distributed among the holders of the Preferred Stock and Common Stock pro rata according to the number of shares of Common Stock held by such holders on an as-converted basis.

If upon the occurrence of a Transaction the assets and funds distributed among the holders of the Series A Preferred shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Any securities to be delivered to the shareholders pursuant to this Section 1 not subject to restrictions on free marketability 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 distribution of such securities; 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 distribution of such securities; and

(iii) If there is no active public market or if such securities are subject to restrictions on free marketability, 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 Investors' Rights Agreement, dated as of November 23, 1998, among the Corporation and the shareholders named on Schedule I thereto, 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.

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 One Dollar and Seventeen Cents (\$1.17) 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 One Dollar and Seventeen Cents (\$1.17) 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.

(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 an aggregate offering price (before deduction of underwriter commissions and offering expenses) of not less than Twenty-Five Million Dollars (\$25,000,000) with a total valuation of the Corporation of not less than One Hundred Million Dollars (\$100,000,000) immediately following such offering; or (ii) the written consent or election of holders of not less than two-thirds of the then outstanding Series A Preferred (collectively, the "Automatic 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 the Automatic Conversion, 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 the 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 the 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.

(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;

(bb) as a dividend or distribution on Series A Preferred or pursuant to any event for which adjustment is made pursuant to Section 4(d)(ii), (iii) or (iv) hereof; or

(cc) upon exercise of options or warrants to subscribe for, purchase or otherwise acquire up to a maximum of One Million Three Hundred Twenty-Five Thousand (1,325,000) shares of Common Stock and issued to employees, consultants and directors of, and consultants to, the Corporation in connection with services rendered to the Corporation and pursuant to arrangements or plans authorized by a majority of the Board of Directors of the Corporation.

(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 (other than as provided in paragraph 4(d)(i)(A)(cc) above) 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 issued 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 the issue of all such Options, whether or not exercised, plus the consideration actually 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 per share (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, the number of shares of such other class or classes of stock that would have been subject to receipt by the holders had their shares of Series A Preferred been converted into Common Stock immediately before that change, 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.

(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.

(g) Reservation of Shares Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

## 5. Investors' Redemption Option

(a) Redemptions. Upon the written request (the "Redemption Request") of an Investor (as defined in the Investors' Rights Agreement) delivered to the Corporation at any time after November 23, 2003, to the extent the shares of Series A Preferred have not been redeemed or converted prior to such date, the Corporation shall redeem, in the manner set forth in the proviso below relating to the payment in annual installments, all of the outstanding shares of Series A Preferred for an amount in cash equal to (the "Redemption Price") the higher of (i) the original purchase price of the Series A Preferred per share, plus any declared but unpaid dividends, plus any additional dividends, if necessary, such that the total amount of dividends paid under this subsection (i) shall equal a seven percent (7%) compound dividend rate (adjusted for any stock distributions or stock dividends with respect to such shares), or (ii) the fair market value of such Series A Preferred shares, as determined by an independent appraiser mutually selected by the Corporation's Board of Directors and the Investor; provided, however, that the Corporation shall redeem the shares of Series A Preferred in three equal (or nearly equal) annual installments beginning sixty (60) days after delivery of the Redemption Request, and thereafter on the first and second anniversary of such initial redemption, from any source of funds legally available therefor. If, and only if, no funds or insufficient funds are available to the Corporation at any time to meet the Corporation's redemption obligations pursuant to this subsection, then the Corporation shall redeem as many shares of Series A Preferred as possible out

of funds or liquid assets as the Board of Directors of the Corporation may deem legally permissible, the obligation to redeem the remaining Series A Preferred being carried over to the end of each quarterly period thereafter (subject to the same limitations on payment as set forth above) until all shares entitled to be redeemed and qualifying for redemption hereunder have been redeemed. The shares of Series A Preferred that have not been redeemed shall continue to be entitled to the dividend, conversion and other rights, preferences, privileges and restrictions of the Series A Preferred. The date on which a redemption occurs under the terms of this Section 5 (a) shall hereinafter be referred to as a "Redemption Date."

(b) Certificates. In case fewer than the total number of shares represented by any certificate are redeemed under Section 5 (a) above, a new certificate representing the number of unredeemed shares shall be issued without cost to such holder within a reasonable period of time after the surrender of the certificate representing the redeemed shares. At least five (5) days prior to a scheduled Redemption Date, the redeeming Investor shall surrender to the Corporation the certificate or certificates representing such shares at the Corporation's headquarters, and thereupon the proportionate amount of the Redemption Price for such shares shall be payable to the order of the person or entity whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. To the extent a redeeming Investor has not surrendered to the Corporation the certificate or certificates representing such shares, then the scheduled Redemption Date shall be delayed until five (5) days after the actual surrender of such certificate or certificates. In the event that less than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) Rights After Redemption. From and after the applicable Redemption Date, unless there shall have been a default in the payment of the proportionate amount of the Redemption Price, all rights of the Investor with respect to the redeemed shares of Series A Preferred (except the right to receive the proportionate amount of the Redemption Price without interest upon surrender of their certificate or certificates), shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(d) Deposit of Redemption Price. Two (2) days prior to a Redemption Date, the Corporation shall deposit in cash the proportionate amount of the Redemption Price to be paid on such Redemption Date on such date with a bank or trust company having aggregate capital and surplus in excess of \$50,000,000 in a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed. Simultaneously, the Corporation shall deposit irrevocable instructions and authority to such bank or trust company to pay, on or after a Redemption Date, the proportionate amount of the Redemption Price to the holders thereof upon surrender of their certificates. Any monies deposited by the Corporation pursuant to this Section 5 (d) for the redemption of shares that are thereafter converted into shares of Common Stock pursuant to the Certificate of Incorporation no later than the close of business on such Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any monies deposited by the Corporation pursuant to this Section (d) remaining unclaimed at the expiration of six (6) months following a Redemption Date shall thereafter be returned to the Corporation, provided that the Investor to which such monies would be payable hereunder shall be entitled, upon proof of its ownership of the Series A Preferred or otherwise an execution of a lost certificate affidavit, receive such monies but without interest from such a Redemption Date.

6. Notices of Record Date. In the event that the Corporation shall propose at any time:

(a) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(b) to offer for subscription *pro rata* to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(c) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(d) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up;

then, in connection with each such event, this Corporation shall send to the holders of the Series A Preferred:

(i) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (c) and (d) above; and

(ii) in the case of the matters referred to in (c) and (d) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of the Series A Preferred at the address for each such holder as shown on the books of this Corporation.

7. Protective Provision. So long as Two Million Eight Hundred Forty-Nine Thousand and Two (2,849,002) shares of Series A Preferred remain outstanding (adjusted for any subdivisions, combinations, consolidations or stock distributions or stock dividends with respect to such shares), 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) Do any act or thing which would result in taxation of the holders of shares of the Series A Preferred under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended); or

(c) Increase the number of shares of Common Stock or Preferred Stock or a series of Preferred Stock authorized hereby;

(d) Increase the number of shares authorized for issuance under any of the Corporation's existing equity incentive plans or issue any additional shares or rights to acquire such shares of the Corporation outside the aforementioned plans to officers, directors, employees or consultants of the Corporation;

(e) Create or issue any new class or series of equity securities of the Corporation having a preference on a parity with or senior to the Series A Preferred with respect to redemption, voting, liquidation or dividends rights;

(f) Consolidate or merge the Corporation with or into any other corporation, or any entity or person, or exchange substantially all of the outstanding stock of the Corporation for shares of another entity or property, in which, after any such transaction, the shareholders of the Corporation immediately prior to the consummation of such transaction hold less than fifty percent (50%) of the voting shares of the continuing or surviving entity, or liquidate or sell substantially all of the assets of the Corporation, unless in any of the aforementioned transactions the aggregate valuation of the Corporation is at least Ninety Million Dollars (\$90,000,000);

(g) Pay or declare any dividend on or other distribution with respect to any Common Stock (except dividends payable solely in shares of Common Stock);

(h) Apply any of the Company's assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Common Stock (other than from employees, officers or directors of the Corporation pursuant to the terms of restrictive stock agreements); or

(i) Directly or indirectly enter into a material agreement or transaction with an Affiliate (as that term is defined in the Securities Act of 1933, as amended);

provided, however, that in the event that any of the foregoing actions affects a holder of twenty-five percent (25%) or more of the Series A Preferred (a "Substantial Minority Holder") in a manner which is materially and adversely different than the manner in which holders of a majority of the Series A Preferred are affected, then the consent of such Substantial Minority Holder shall be required.

8. 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.

#### ARTICLE VI

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.

#### ARTICLE VII

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.

#### ARTICLE VIII

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.

#### **ARTICLE IX**

Subject to Article V, Section 7 and Article VIII hereof, 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.

The foregoing amendment and restatement of the Articles of Incorporation has been duly authorized and directed by Unanimous Written Consent of the Board of Directors and Shareholders of the Corporation, dated November 19, 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 31<sup>st</sup> day of August, 1999, on behalf of the Corporation.

  
Alexander Tellez  
President

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