

P 99 0000 67416

Holland & Knight LLP

Requester's Name

315 S. Calhoun St., suite 600

Address

Tallahassee, Fl. 32301 425-5675

City/State/Zip

Phone #

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

00 APR 21 PM 4:20

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**CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):**

1. e Angler P99000067416  
(Corporation Name) (Document #)
2. \_\_\_\_\_  
(Corporation Name) (Document #)
3. \_\_\_\_\_  
(Corporation Name) (Document #)
4. \_\_\_\_\_  
(Corporation Name) (Document #)

- ☐ Walk in ☐ Pick up time \_\_\_\_\_ ☐ Certified Copy  
☐ Mail out ☐ Will wait ☐ Photocopy ☐ Certificate of Status

**NEW FILINGS**

- ☐ Profit  
☐ Not for Profit  
☐ Limited Liability  
☐ Domestication  
☐ Other

*Amend + Re-state  
4-21-00  
MS*

**AMENDMENTS**

- ☒ Amendment  
☐ Resignation of R.A., Officer/Director  
☐ Change of Registered Agent  
☐ Dissolution/Withdrawal  
☐ Merger

**OTHER FILINGS**

- ☐ Annual Report  
☐ Fictitious Name

**REGISTRATION/QUALIFICATION**

- ☐ Foreign  
☐ Limited Partnership  
☐ Reinstatement  
☐ Trademark  
☐ Other

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00 APR 21 AM 11:13  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

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Examiner's Initials

**FILED**

00 APR 21 PM 4:20

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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

**eANGLER, INC.** (the "Corporation"), a corporation organized under the laws of Florida, hereby amends and restates its Articles of Incorporation as follows:

1. The name of the Corporation is eAngler, Inc. The date of filing of the Corporation's original Articles of Incorporation with the Secretary of State of Florida was July 29, 1999.

2. These Amended and Restated Articles of Incorporation (the "Amended and Restated Articles") of the Corporation have been adopted in accordance with Section 607.1007 of the Florida Business Corporation Act.

3. The text of the Articles of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

**ARTICLE I - Name**

The name of the Corporation is: **eANGLER, INC.**

**ARTICLE II - Address**

The Corporation's current mailing address is 3821 Henderson Boulevard, Tampa, Florida.

**ARTICLE III - Commencement of Existence**

The existence of the Corporation began on July 29, 1999.

**ARTICLE IV - Purpose**

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the laws of the United States and Florida.

## **ARTICLE V - Capital Stock**

(a) The capital stock of the Corporation shall be divided into two classes: 25,000,000 shares of Common Stock having a par value of \$.001 per share (the "Common Stock") and 10,000,000 shares of Preferred Stock, having a par value of \$.01 per share (the "Preferred Stock"). Subject to the further requirements of Part B, Section 7 of this Article V, the number of authorized shares of any such class or classes may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of the Corporation on the basis specified in Part B, Section 5 of this Article V.

(b) Except as provided in the Stockholders' and Rights Agreement entered into on or about the date of these Amended and Restated Articles, among the Corporation and the shareholders and other parties named therein, as amended from time to time, a copy of which is on file and available for inspection at the offices of the Corporation (the "Stockholders' Agreement"), no shareholder shall be entitled as a matter of right to purchase or subscribe for any unissued shares of the Corporation whether now or hereafter authorized or whether of a class now existing or of a class hereafter created, or to purchase or subscribe for any bonds, certificates of indebtedness, debentures, or other obligations convertible into shares of the Corporation.

(c) All shares of the Preferred Stock shall be identical except as to the variations among different series authorized in this Article V. Subject to any shareholder approval rights set forth in this Article V, the Board of Directors of the Corporation (the "Board of Directors") is expressly authorized to establish series of the Preferred Stock, to fix the number of shares therein, and to fix the voting powers, designation, preferences and relative, participating, optional and other special rights and qualifications, limitations or restrictions of each such series of the Preferred Stock.

### **A. COMMON STOCK**

#### **Section 1**

#### **Voting Rights**

The holders of shares of Common Stock shall be entitled to one vote for each share so held with respect to each matter voted on by the shareholders of the Corporation.

## **Section 2**

### **Liquidation Rights**

Upon any liquidation, dissolution or winding up of the affairs of the Corporation, the holders of Common Stock shall be entitled to receive distributions of the assets and surplus funds of the Corporation in accordance with the terms of Part B, Section 2(a) of this Article V.

## **Section 3**

### **Dividends**

Dividends may be paid on the Common Stock as and when declared by the Board of Directors, subject, however, to the rights of the holders of Preferred Stock set forth in Part B, Section 6 of this Article V.

## **B. PREFERRED STOCK**

The rights, preferences, privileges and restrictions granted to and imposed upon the Preferred Stock are as follows:

### **Section 1**

#### **Designation**

The initial series of Preferred Stock shall be designated and known as "Series A Preferred Stock." The number of authorized shares constituting such series shall be one million six hundred seventy-four thousand nine hundred (1,674,900).

### **Section 2**

#### **Liquidation Rights**

(a) Liquidation. In the event of any liquidation, dissolution or winding up of the Corporation, the holders of the Corporation's capital stock shall be entitled to receive distributions from the Corporations assets and surplus funds as follows:

(i) Series A Preferred Stock. Subject to paragraph (iv) below, each holder of shares of Series A Preferred Stock shall be entitled to receive upon such liquidation, dissolution or winding up, and prior and in preference to any distribution of any of the

assets or surplus funds of the Corporation to the holders of the Common Stock and any other series of Preferred Stock which is junior to the Series A Preferred Stock, by reason of his, her or its ownership thereof, an amount per share of the Series A Preferred Stock equal to the Series A Liquidation Amount (as defined below). As used herein, "Series A Liquidation Amount" shall mean an amount equal to \$5.665 per share, plus accrued and unpaid dividends.

(ii) Common Stock. Subject to paragraph (iv ) below, after the payment to the holders of the Series A Preferred Stock of the Series A Liquidation Amount, each holder of shares of Common Stock shall be entitled to receive, by reason of his, her or its ownership thereof, an amount per share of the Common Stock equal to \$2,500,000 divided by the number of shares of Common Stock then outstanding.

(iii) Remaining Assets and Funds. Subject to paragraph (iv) below, after the payment to the holders of the Series A Preferred Stock of the Series A Liquidation Amount, and then to the holders of the Common Stock of the amount determined pursuant to paragraph (ii) above, any remaining assets and surplus funds of the Corporation shall be distributed to the holders of the Series A Preferred Stock and the Common Stock ratably on an as-converted basis.

(iv) Straight Pro Rata Distribution. Notwithstanding the foregoing paragraphs (i) through (iii), in the event that the amount that the holders the Series A Preferred Stock would receive on an as-converted basis in connection with such liquidation, dissolution or winding up if all assets and surplus funds were distributed to the holders of the Series A Preferred Stock and the Common Stock ratably on an as-converted basis (without regard to the terms of paragraphs (i) through (iii) above) would be at least \$17.00 per share of Series A Preferred Stock (as adjusted for stock splits, stock combinations, recapitalizations and other similar events affecting the Series A Preferred Stock), then in lieu of making distributions in accordance with the terms of paragraphs (i) through (iii) above, all assets and surplus funds shall be distributed to the holders of the Series A Preferred Stock and the Common Stock ratably on an as-converted basis.

(b) Pro Rata Distribution. If the assets or surplus funds to be distributed to the holders of (i) the Series A Preferred Stock under Part B, Section 2(a)(i) of this Article V and (ii) the holders of any other series of Preferred Stock ranking on a parity with the Series A Preferred Stock are insufficient to permit the payment to such holders of their full preferential amount, the assets and surplus funds legally available for distribution shall be distributed ratably among (i) the holders of the Series A Preferred Stock (to the extent provided in Part B, Section 2(a)(i) of this Article V) and (ii) the holders of such other series of Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive. If the assets or surplus funds to be distributed to the holders of the Common Stock under Part B, Section 2(a)(ii) of this Article V are insufficient to permit the payment to such holders of \$2,500,000 in the aggregate pursuant to such Section 2(a)(ii), then the assets and surplus funds legally available for distribution under such Section 2(a)(ii) shall be distributed ratably among

the holders of the Common Stock (to the extent provided in Part B, Section 2(a)(ii) of this Article V).

(c) Series A Preferred Stock Priority. All of the preferential amounts to be paid to the holders of (i) the Series A Preferred Stock under this Part B, Section 2 of this Article V and (ii) the holders of any other series of Preferred Stock ranking on a parity with the Series A Preferred Stock shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets or surplus funds of the Corporation to, the holders of the Common Stock and any other series of Preferred Stock which is junior to the Series A Preferred Stock in connection with such liquidation, dissolution or winding up.

(d) Consolidation, Merger, Sale of Assets. A consolidation or merger of the Corporation with or into another corporation or entity, or a conveyance of all or substantially all of the assets of the Corporation, shall be regarded as a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of Part B, Section 2(a) of this Article V, unless the holders of voting securities of the Corporation own directly or indirectly more than fifty percent (50%) of the voting power to elect directors of the consolidated, surviving or acquiring corporation or entity. Any securities to be delivered to the holders of the Series A Preferred Stock upon the closing of any such consolidation, merger, sale or transfer shall be valued as follows:

2A. For securities not subject to restrictions on transfer under an investment letter or other similar restrictions on free marketability:

(i) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of such securities on such exchange over the thirty (30) day period ending three (3) days prior to such closing;

(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 thirty (30) day period ending three (3) days prior to such closing; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Series A Preferred Stock which would be entitled to receive such securities or the same type of securities.

2B. The method of valuation of securities subject to an investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in Part B, subsection 2A of this Article V to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Series A Preferred Stock which would be entitled to receive such securities or the same type of securities.

2C. The fair market value of any other assets or property shall be determined by mutual agreement of the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Series A Preferred Stock which would be entitled to receive such assets or property.

### Section 3

#### Conversion

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

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof, at the option of the holder thereof, at the office of the Corporation or any transfer agent for the Series A Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$5.665 by the Conversion Price, determined as hereinafter provided, in effect at the time of conversion. If more than one share of the Series A Preferred Stock shall be surrendered for conversion at the same time by the same holder of record, the number of full shares that shall be issuable upon the conversion thereof shall be computed on the basis of the total number of shares of the Series A Preferred Stock so surrendered. Each share of Series A Preferred Stock shall be so convertible at any time after the date of issuance of such share. The price at which shares of Common Stock shall be deliverable upon conversion of Series A Preferred Stock without the payment of any additional consideration by the holder thereof (the "Conversion Price") shall initially be \$5.665 per share of Common Stock. Such initial Conversion Price shall be subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series A Preferred Stock is convertible, as hereinafter provided.

(b) Automatic Conversion at the Option of the Corporation or Election of Holders. Each share of Series A Preferred Stock shall be converted into shares of Common Stock at the then effective Conversion Price upon the first to occur of the following: (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of Common Stock for the account of the Corporation to the public at an aggregate offering price resulting in gross proceeds to the Corporation as seller of not less than \$20,000,000, net of underwriting discounts and commissions, provided that the offering price per share of Common Stock is not less than \$17.00 per share (as adjusted for stock splits, combinations and other similar events affecting the Common Stock, the (the "Automatic Conversion Price" and a "Qualified Offering"), and (ii) the election by holders of at least two-thirds of the outstanding shares of Series A Preferred Stock. In the case of clause (i) above, the Corporation (1) shall give to each holder of Series A Preferred Stock notice of such conversion at least thirty (30) days prior to the scheduled closing of the Qualified Offering, and (2) the party or parties entitled to receive the Common Stock issuable upon such conversion of the

Series A Preferred Stock shall not be deemed to have converted their Series A Preferred Stock until immediately prior to the closing of such Qualified Offering.

(c) Mechanics of Conversion. Each party who holds of record Series A Preferred Stock at the time of any conversion shall be entitled to any dividends which have been declared but remain unpaid at such time. Such dividends shall be paid to all such holders upon the conversion, or at the election of each holder, shall be converted into shares of Common Stock at their fair market value above as determined by the Board of Directors. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price. Except in the case of an automatic conversion pursuant to Part B, Section 3(b) of this Article V, before any holder of Series A Preferred Stock shall be entitled to convert the same into full shares of Common Stock, he, she or it 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 Stock, and shall give written notice to the Corporation at such office that he, she or it elects to convert the same (such notice shall also indicate whether such holder elects to convert into Common Stock accrued dividends on the Series A Preferred Stock to be converted). Upon the date of a conversion pursuant to Part B, Section 3(b) of this Article V, any party entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date, whether or not such holder has surrendered the certificate or certificates for such holder's shares of Series A Preferred Stock. A holder surrendering his, her or its certificate or certificates shall notify the Corporation of his, her or its name or the name or names of his, her or its nominees in which he, she or it wishes the certificate or certificates for shares of Common Stock to be issued. If the person or persons in whose name any certificate for shares of Common Stock issuable upon such conversion shall be other than the registered holder or holders of the Series A Preferred Stock being converted, the Corporation's obligation under this Part B, Section 3(c) of this Article V shall be subject to the payment and satisfaction by such registered holder or holders of any and all transfer taxes in connection with the conversion and issuance of such Common Stock. The Corporation shall, as soon as practicable thereafter (and, in any event, within ten (10) days of such surrender), issue and deliver at such office to such holder of Series A Preferred Stock, or to his, her or its nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which he, she or it shall be entitled as aforesaid, together with cash in lieu of any fraction of a share and any accrued dividends that the holder has not elected to convert into Common Stock. Except in the case of a conversion pursuant to Part B, Section 3(b) of this Article V, 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 Series A Preferred Stock to be converted, and the party or parties entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.



(d) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of this Part B, Section 3(d) of this Article V, the following definitions shall apply:

(1) "Additional Shares of Common Stock" shall mean any or all shares of Common Stock issued (or, pursuant to Part B, Section 3(d)(iii) of this Article V, deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(A) pursuant to the warrants to purchase Series A Preferred Stock issued in connection with the original issuance of shares of Series A Preferred Stock;

(B) upon conversion of shares of Series A Preferred Stock;

(C) to employees, officers or directors of, or consultants or advisers to, the Corporation pursuant to the Corporation's 1999 Stock Option Plan, as amended, provided that the number of shares so issued or issuable shall not exceed 534,400 (as adjusted for stock splits, combinations and other similar events affecting the Common Stock), plus such additional number of shares of Common Stock as may be approved by the holders of at least two-thirds of outstanding Series A Preferred Stock (the "Reserved Employee Shares");

(D) to financial institutions in connection with borrowing or lease financing arrangements of the Corporation, provided that such issuances are unanimously approved by the Board of Directors; or

(E) in connection with a consolidation, merger or sale of all or substantially all of the Corporation's assets in a transaction which the holders of voting securities of the Corporation own directly or indirectly more than fifty percent (50%) of the voting securities of the consolidated, surviving or acquiring corporation, provided that the Preferred Directors approve such consolidation, merger or sale of assets.

(2) "Convertible Securities" shall mean any evidences of indebtedness, shares of capital stock or other securities directly or indirectly convertible into or exchangeable for Common Stock.

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

(4) "Original Issue Date" shall mean the first date on which a share of Series A Preferred Stock shall have been issued.

(5) "Preferred Directors" shall mean the directors nominated and elected to the Board of Directors of the Corporation by the holders of Series A Preferred Stock, voting separately as a class, as provided in Part B, Section 5(b)(ii) of this Article V.

(ii) No Adjustment of Conversion Price. Subject to the provisions of Part B, Sections 3(d)(iii)(2) and 3(d)(vi) of this Article V, no adjustment in the number of shares of Common Stock into which any series of the Series A Preferred Stock is convertible shall be made, by adjustment in the Conversion Price of the Series A Preferred Stock in respect of the issuance of Additional Shares of Common Stock or otherwise, unless the consideration per share for an Additional Share of Common Stock issued (or deemed to be issued pursuant to Part B, Section 3(d)(iii) of this Article V) by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Share of Common Stock.

(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options (excluding options contemplated by Part B, Section 3(d)(i)(C) of this Article V) or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that such Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Part B, Section 3(d)(v) of this Article V) 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:

(A) 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;

- (B) if such Options or Convertible Securities by their terms provide, with the passage of time, pursuant to any provisions designed to protect against dilution, or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue of such Options on Convertible Securities (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;
- (C) 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 of such Options on Convertible Securities (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 such Options or Convertible Securities, as the case may be, were never issued;
- (D) no readjustment pursuant to clause (B) or (C) 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 date on which an adjustment was made pursuant to this Part B, Section 3(d)(iii)(l) of this Article V, or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between such original adjustment date and the date on which a readjustment is made pursuant to clause (B) or (C) above;
- (E) 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, whereupon such adjustment shall be made in the same manner provided in clause (C) above; and
- (F) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Part B, Section 3(d)(iii) of this Article V as of the actual date of their issuance.

(2) Stock Dividends, Stock Distributions and Subdivisions. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then and in any such event, Additional Shares of Common Stock shall be deemed to have been issued:

- (A) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend or distribution, or
- (B) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and such dividend shall not have been fully paid on the date fixed for the payment thereof, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Part B, Section 3(d)(iii) of this Article V as of the time of actual payment of such dividend.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Part B, Section 3(d)(iii)(1) of this Article V, but excluding Additional Shares of Common Stock deemed to be issued pursuant to Part B, Section 3(d)(iii)(2) of this Article V, which event is dealt with in Part B, Section 3(d)(vi) of this Article V) 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 the Conversion Price shall be reduced, concurrently with such issue, to the price determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such issue or sale and the number of shares of Common Stock issuable upon conversion of all Series A Preferred Stock and any other Convertible Securities multiplied by the then existing Conversion Price and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) the total number of shares of Common Stock outstanding immediately after such issue or sale and the number of shares of Common Stock issuable upon conversion of all Series A Preferred Stock and any other Convertible Securities.

(v) Determination of Consideration. For purposes of this Part B, Section 3(d) of this Article V, 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:

- (A) insofar as it consists of cash, be the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;
- (B) insofar as it consists of 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
- (C) in the event Additional Shares of Common Stock are issued together with other shares of securities or other assets of the Corporation for a single undivided consideration, be the proportion of such consideration so received allocable to such Additional Shares of Common Stock, computed as provided in clauses (A) and (B) 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 Part B, Section 3(d)(iii)(l) of this Article V shall be determined by dividing

- (x) 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 of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by
- (y) 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 of such Options or the conversion or exchange of such Convertible Securities.

(vi) Adjustment for Stock Dividends, Stock Distributions, Subdivisions, Combinations or Consolidations of Common Stock.

(1) Stock Dividends, Stock Distributions or Subdivisions. In the event the Corporation shall, after the Original Issue Date, issue Additional Shares of Common Stock pursuant to Part B, Section 3(d)(iii)(2) of this Article V, in a stock dividend, other stock distribution or subdivision, the Conversion Price in effect immediately prior to such stock dividend, stock distribution or subdivision shall, concurrently with the effectiveness of such stock dividend, stock distribution or subdivision, be proportionately decreased to adjust equitably for such dividend, distribution or subdivision.

(2) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall, after the Original Issue Date, be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased to adjust equitably for such combination or consolidation.

(vii) Adjustment for Merger or Reorganization, etc. In case of any consolidation or merger of the Corporation with or into another corporation or entity, or the conveyance of all or substantially all of the assets of the Corporation to another corporation or entity, or any proposed reorganization or reclassification of the Corporation (except a transaction for which provision for adjustment is otherwise made in this Part B, Section 3 of this Article V, and except for a transaction treated as a liquidation, dissolution or winding-up of the Corporation under this Part B, Section 2(d) of this Article V (a "Liquidation Transaction")), each share of Series A Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Series A Preferred Stock would have been entitled upon such consolidation, merger, conveyance, reorganization or reclassification; and, in any such case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of the provisions herein set forth with respect to the rights and interest thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series A Preferred Stock. The Company shall not effect any consolidation, merger, conveyance, reorganization or reclassification, other than a Liquidation Transaction, unless prior to or simultaneously with the consummation thereof the successor corporation or entity, or purchaser, as the case may be, shall assume by written instrument the obligation to deliver to the holder of the Series A Preferred Stock such shares of stock, securities or

assets as, in accordance with the foregoing provisions, such holder is entitled to receive.

(e) No Impairment. The Corporation will not, by amendment of its Amended and Restated 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 Part B, Section 3 of this Article V 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 Stock against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Part B, Section 3 of this Article V, 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 Stock 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 Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) all such adjustments and readjustments theretofore made, (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 such time would be received upon the conversion of Series A Preferred Stock.

(g) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is in the same amount per share as cash dividends paid in previous quarters) or other distribution, the Corporation shall mail to each holder of Series A Preferred Stock at least ten (10) days prior to the date thereof, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(h) Common Stock Reserved. The Corporation shall reserve and at all times keep available out of its authorized but unissued Common Stock, free from preemptive or other preferential rights, restrictions, reservations, dedications, allocations, options, other warrants and other rights under any stock option, conversion option or similar agreement, such number of shares of Common Stock as shall from time to time be sufficient to effect conversion of the Series A Preferred Stock in full.

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

(j) Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Series A 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 Series A 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 Series A Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series A Preferred Stock in any manner which interferes with the timely conversion of such Series A Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

(l) Definition of Common Stock. As used in this Part B, Section 3 of this Article V, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, par value \$.001 per share, as constituted on the date of filing of these Amended and Restated Articles of Incorporation, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall neither be limited to a fixed sum or percentage of par value in respect of the rights of the holders thereof to participate in dividends nor entitled to a preference in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Common Stock receivable upon conversion of shares of Series A Preferred Stock shall include only shares designated as Common Stock of the Corporation on the date of filing of these Amended and Restated Articles of Incorporation.

## Section 4

### Redemption

(a) Election to Redeem. The holders of at least two-thirds of the outstanding shares of Series A Preferred Stock shall have the right at any time and from time to time, on or after April 21, 2004, to elect by written notice to the Corporation, to compel the Corporation to redeem, pro rata any or all of the then outstanding shares of Series A Preferred Stock (a "Redemption Election"). Such right may be exercised on one or more occasions after April 21, 2004. The Corporation shall give notice of any Redemption Election to each holder of shares of Series A Preferred Stock to be redeemed at least forty-five (45) days prior to the requested date of redemption (the "Redemption Date"). A notice of redemption shall state the number of shares of Series A Preferred Stock to be redeemed, and if less than all of the outstanding shares of Series A Preferred Stock are to be redeemed, each holder of Series A Preferred Stock shall have its, his or her pro rata share of all outstanding shares of Series A Preferred Stock so redeemed. The Corporation shall, to the fullest extent permitted by law, do all things necessary to redeem the Series A Preferred Stock and make the payments therefor required by this Part B, Section 4 of this Article V.

(b) Redemption Price. The "Redemption Price" for each share of Series A Preferred Stock to be redeemed on the Redemption Date hereunder shall be calculated in all cases as of the Redemption Date and shall be equal to the greater of (i) \$5.665, plus accrued



and unpaid dividends, and (ii) the Fair Market Value (as defined in Part B, Section 4(f) of this Article V) of each share of Series A Preferred Stock. The Redemption Price shall be payable in cash in immediately available funds to the respective holders on the later to occur of (A) the Redemption Date or (B) forty-five (45) days following the date that of the determination of the Fair Market Value of such shares is made pursuant to Part B, Section 4(f) of this Article V (subject to Part B, Section 4(c) of this Article V). The number of shares to be redeemed by any holder which has requested redemption on the Redemption Date or as to which the Corporation has given a notice of redemption shall be determined by multiplying such amount requested to be redeemed by a fraction, the numerator of which is the aggregate number of shares to be redeemed on such Redemption Date by all holders and the denominator of which is the aggregate number of shares requested to be redeemed on such Redemption Date by all holders or the Corporation, as the case may be.

(c) Available Funds. If on any Redemption Date sufficient funds are not legally available to redeem all of the shares of Series A Preferred Stock then due to be redeemed, then (i) the holders of Series A Preferred Stock shall share in any funds not so restricted and legally available for redemption pro rata based on the number of shares of Series A Preferred Stock then held by them, (ii) any and all shares scheduled to be redeemed in accordance with Part B, Sections 4(a) and 4(b) of this Article V but not so redeemed (any such shares are "Unredeemed Shares") shall be carried forward and redeemed at such time and to the extent that funds of the Corporation are legally available therefor, and (iii) Unredeemed Shares shall continue to be entitled to the dividend, conversion and other rights, preferences and privileges of the Series A Preferred Stock until such shares have been redeemed and the Redemption Price has been paid or otherwise set aside with respect thereto. For so long as any Unredeemed Shares remain unredeemed, the Corporation shall not pay any dividend or other distribution on the Common Stock.

(d) Notice. Notice of any requested redemption shall be given by certified or registered mail (return receipt requested), postage prepaid. Any notice given by the Corporation shall be addressed to each holder at the address as it appears on the stock transfer books of the Corporation and shall specify the Redemption Date and the number of shares requested to be redeemed. On or after the Redemption Date as specified in any notice, the holder shall surrender such holder's certificate for the number of shares to be redeemed as stated in the notice to or from the Corporation. If less than all of the shares represented by such certificates are redeemed, a new certificate shall forthwith be issued for the unredeemed shares.

(e) Dividend, Conversion After Redemption Payment Date. From and after the Redemption Date, no shares of Series A Preferred Stock subject to redemption shall be entitled to dividends, if any, as contemplated by Part B, Section 6 of this Article V; provided, however, that any Unredeemed Shares shall continue to be entitled to dividends and interest thereon as provided in Part B, Sections 6 and 4(c) of this Article V, respectively, until the date on which such shares are actually redeemed by the Corporation. In addition, from and after the Redemption Date, no shares of Series A Preferred Stock subject to redemption shall be

entitled to the conversion privileges set forth in Part B, Section 3 of this Article V, except as provided in Part B, Section 4(c) of this Article V with respect to Unredeemed Shares.

(f) Determination of Fair Market Value. For purposes of this Part B, Section 4 of this Article V, the "Fair Market Value" of any share of Series A Preferred Stock of the Corporation to be redeemed pursuant to a Redemption Election shall be determined as follows: (i) within five (5) days after a Redemption Election the holders of not less than a majority of the outstanding shares of Series A Preferred Stock (the "Redeeming Shareholders") and the Corporation shall submit their good faith estimate of such Fair Market Value as of the Redemption Date; (ii) to the extent that the Fair Market Value estimates of the Corporation and the Redeeming Shareholders differ, the Corporation and the Redeeming Shareholders shall engage, for an additional 5-day period, in good faith negotiations to reach agreement (if possible) on such Fair Market Value; and (iii) if the Corporation and the Redeeming Shareholders fail to reach agreement at the end of the foregoing 5-day period, the Fair Market Value shall be determined by appraisal as set forth below.

In the event Fair Market Value is to be determined by appraisal, the Corporation and the Redeeming Shareholders shall initially negotiate in good faith to select a mutually agreeable appraiser to determine Fair Market Value with such determination to be binding on all concerned. If the Corporation and the Redeeming Shareholders shall fail to agree on the selection of such appraiser within five (5) days following the expiration of the 5-day period specified in the preceding paragraph, then the Corporation shall select one independent appraiser and the Redeeming Shareholders shall select another independent appraiser and such appraisers shall promptly designate a third independent appraiser. Each of the three appraisers shall provide a determination of the Fair Market Value within twenty (20) days of the appointment of the third appraiser. The Fair Market Value under such circumstances shall be an amount equal to the average of the amounts determined by the appraisers within such twenty (20) day period; provided that in the event that the highest appraisal is more than fifteen percent (15%) higher than the middle appraisal or the lowest appraisal is more than fifteen percent (15%) lower than the middle appraisal, the appraisal that is more than fifteen percent (15%) higher or lower, or both, as the case may be, shall be disregarded in calculating the Fair Market Value. In the event that the two original appraisers cannot agree upon the final appraiser within ten (10) days following their selection by the Corporation and the Redeeming Shareholders, then the final appraiser shall be appointed by the American Arbitration Association. The determination of Fair Market Value shall be conclusive, final and binding on all holders of Series A Preferred Stock and the Corporation and shall be enforceable in any court having any jurisdiction over a proceeding brought to seek enforcement. All fees and expenses incurred in connection with an appraisal under this Part B, Section 4(f) of this Article V shall be borne equally by the Corporation and the Redeeming Shareholders. Fair Market Value shall be determined as of the Redemption Date on the basis of the following assumptions: (i) without any reduction in value for lack of control or the inherent lack of liquidity of non-public minority interests; and (ii) giving full effect to the earnings history and prospects of the Corporation.

## Section 5

### Voting Rights

(a) Number of Votes. Except as otherwise required by law and the provisions of this Part B, Section 5 of this Article V, the holders of Series A Preferred Stock and the holders of the Common Stock shall be entitled to notice of any shareholders' meeting and to vote together as a single class of capital stock upon any matter submitted to a shareholder for a vote, on the following basis:

(i) Holders of Common Stock shall have one vote per share; and

(ii) Holders of Series A Preferred Stock shall have that number of votes per share as is equal to the number of shares of Common Stock into which each such share of Series A Preferred Stock held by such holder is convertible at the time of such vote.

(b) Election of Directors. At any time when shares of Series A Preferred Stock are outstanding, the Board of Directors shall consist of seven (7) members, unless at least two-thirds of the holders of outstanding shares of Series A Preferred Stock approve otherwise by vote or written consent. Except as otherwise required by law, and subject to the terms of the Stockholders' Agreement, the holders of Series A Preferred Stock and the holders of Common Stock shall be entitled to vote upon the election of directors on the following basis:

(i) the holders of Common Stock then issued and outstanding, voting separately as a class, shall, by majority vote, elect three (3) members of the Board of Directors;

(ii) the holders of Series A Preferred Stock, voting separately as a class shall, by majority vote, elect two (2) members of the Board of Directors; and

(iii) the holders of Common Stock and the holders of Series A Preferred Stock, voting together as a class, shall, by majority vote, elect two (2) members of the Board of Directors.

(c) Quorums. Except as otherwise required by law, the following shall constitute quorums at meetings of shareholders:

(i) The presence in person, by teleconference or by proxy of the holders of shares constituting a majority of the votes entitled to vote thereat, calculated in accordance with Part B, Section 5(a) of this Article V, shall constitute a quorum for the purpose of transaction of business at all meetings of shareholders, except with respect to election of directors under Part B, Section 5(b) of this Article V; and

(ii) For the purpose of electing directors, (A) the presence in person, by teleconference or by proxy of the holders of a majority of the shares of Common Stock entitled to vote thereat shall constitute a quorum for the purpose of electing that number of directors of the Board of Directors which such shareholders are entitled to elect, voting separately as a class; (B) the presence in person, by teleconference or by proxy of the holders of a majority of the shares of Series A Preferred Stock entitled to vote thereat shall constitute a quorum for the purpose of electing that number of directors of the Board of Directors which such shareholders are entitled to elect, voting separately as a class, and (C) the presence in person, by teleconference or by proxy of the holder of a majority of the shares of the Common Stock and the Series A Preferred Stock entitled to vote shall constitute a quorum for the purpose of electing that number of directors of the Board of Directors which such shareholders are entitled to elect, voting together as a class.

## **Section 6**

### **Dividend Rights**

Each holder of shares of Series A Preferred Stock shall be entitled to receive, for each share of Series A Preferred Stock registered in his, her or its name on the stock transfer books of the Corporation, annual dividends at a rate equal to seven percent (7%) of the initial per share issuance price of the Series A Preferred Stock per annum (the "Dividend Rate"), payable in cash (i) when, as and if declared by the Board of Directors, (ii) upon liquidation or redemption and (iii) as otherwise expressly required by these Amended and Restated Articles of Incorporation. Dividends on Series A Preferred Stock shall accrue on each share beginning on the date of issuance, and shall be cumulative. Any payment made by the Corporation on the unpaid cumulative dividends, if less than the total amount of such dividends, shall be applied first to those dividends which have been accrued for the longest time. The holders of Series A Preferred Stock shall be entitled to participate pro rata in any dividends paid on the Common Stock on an as-if-converted basis.

No dividend or other distribution shall be paid on or declared or set apart for payment on any shares of the Common Stock or any shares of any other class or series or issue of Preferred Stock as long as any dividends payable on the Series A Preferred Stock are in arrears.

The term "distribution" as used in this Part B, Section 6 of this Article V shall include the transfer of cash or property without consideration, whether by way of dividend or otherwise (except a dividend in shares of Common Stock), or the purchase or redemption of shares of the Corporation (other than from employees of the Corporation upon termination of employment or pursuant to the Corporation's rights of first refusal, in each case upon approval of the Board of Directors), for cash or property, including such transfer, purchase or redemption by a subsidiary of the Corporation. The time of any distribution by way of dividends shall be the date of declaration thereof, and the time of any distribution by purchase

or redemption of shares shall be the date on which cash or property is transferred by the Corporation, whether or not pursuant to a contract of an earlier date; provided that where a debt security is issued in exchange for shares, the time of the distribution is the date when the Corporation acquires the shares for such exchange.

## **Section 7**

### **Covenants**

Without limiting the rights of the holders of the Series A Preferred Stock to vote as a class, as required by law, so long as any shares of Series A Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of not less than two-thirds of such outstanding shares of Series A Preferred Stock:

- (a) amend or repeal any provision of, or add any provision to, the Corporation's Amended and Restated Articles of Incorporation or Bylaws;
- (b) increase or decrease the authorized number of shares of Series A Preferred Stock;
- (c) reclassify any Common Stock into shares having any preference or priority as to dividends or assets or other rights and privileges in any case superior to or on a parity with any such preference, priority, right or privilege of the Series A Preferred Stock (including, without limitation, by granting to the holder of any security issued by the Corporation a security interest or lien on assets of the Corporation), or otherwise effect a capital reorganization of either the Corporation or any subsidiary of the Corporation, or effect a liquidation, or dissolution or winding up of the Corporation;
- (d) apply any of its assets to the redemption, retirement, purchase or other acquisition directly or indirectly, through subsidiaries or otherwise, of any shares of Common Stock or other securities of the Corporation (other than the Series A Preferred Stock), except from employees of the Corporation upon termination of employment or pursuant to the Corporation's rights of first refusal;
- (e) liquidate, dissolve or wind up the corporation, or consolidate or merge the Corporation or any subsidiary of the Corporation into or with, or acquire or cause any subsidiary of the Corporation to acquire the stock or all or substantially all the assets of, any other corporation, partnership or other entity;
- (f) sell, lease, convey, encumber or otherwise dispose of all or substantially all of the property or business of the Corporation or any subsidiary of the Corporation;
- (g) create, authorize or issue, directly or indirectly, capital stock or other securities, having any preference or priority as to dividends or assets, or other rights or

privileges, in any case superior to or on a parity with any such preference, priority, right or privilege of the Series A Preferred Stock (including, without limitation, by granting to the holder of any security issued by the Corporation a security interest or lien on assets of the Corporation, excluding security interests relating to loans made to the Corporation from financial institutions, provided that such security interests do not secure any obligations related to equity securities of the Corporation);

(h) pay, set aside for payment or declare any dividend or other distribution (as defined in Part B, Section 6 of this Article V) on any share of Common Stock or any shares of any other class or series or issue of Preferred Stock;

(i) change the nature of the Corporation's business in any material way or make any material change to the Corporation's business plan, as approved by the holders of at least two-thirds of the Series A Preferred Stock;

(j) permit any subsidiary to issue or sell, or obligate itself to issue or sell (except to the Corporation), any equity security of the such subsidiary; or

(k) amend this Part B, Section 7 of this Article V.

## **Section 8**

### **Stock Dividends, Stock Distributions, Subdivisions, Combinations and Consolidations**

In the event the Corporation shall issue additional shares of Series A Preferred Stock in a stock dividend, other stock distribution or subdivision, or in the event the outstanding shares of Series A Preferred Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Series A Preferred Stock, (i) the Series A Liquidation Amount (as defined in Part B, Section 2(a) of this Article V), (ii) the dollar amount set forth in the first sentence of Part B, Section 3(a) of this Article V; and (iii) the dollar amount set forth in Part B, Section 4(b)(i) of this Article V, in each case in effect immediately prior to such event shall, concurrently therewith, be proportionately decreased (in the case of a stock dividend, other stock distribution or subdivision) or increased (in the case of a combination or consolidation) in each such case to adjust equitably therefor.

## **Section 9**

### **Residual Rights**

All rights accruing to the outstanding shares of capital stock of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

#### **ARTICLE VI – Registered Office and Agent**

The street address of the representatives office of the Corporation is 3821 Henderson Boulevard, Tampa, Florida and the name of the corporation's registered agent at that address is Michael B. Davis.

#### **ARTICLE VII - Board of Directors**

The business and affairs of the Corporation shall be managed by the Board of Directors; subject to Part B, Section 5(b) of Article V, the number of directors shall be determined by the Board of Directors in accordance with the bylaws. A director shall hold office until the next annual meeting and until his successor shall be elected and shall qualify subject, however, to his prior death, resignation, retirement, disqualification or removal from office.

#### **ARTICLE VIII - Indemnification and Liability**

To the fullest extent permitted by the laws of Florida (as such laws may be from time to time amended), each officer and director of this Corporation shall be indemnified by the Corporation. Such indemnification shall include the advancement of expenses, to the fullest extent permitted by such laws.

#### **ARTICLE IX - Shareholder Meetings**

Meetings of the shareholders may be held within or without the State of Florida.

#### **ARTICLE X - Bylaws**

The power to adopt, alter, amend or repeal the bylaws shall be vested in the Board of Directors and the shareholders, except that the Board of Directors may not amend or repeal any bylaw if the shareholders specifically provide that such bylaw is not subject to amendment or repeal by the directors.

#### **ARTICLE XI - Amendments and Repeal**

The Corporation reserves the right to amend, alter, change, or repeal any provision contained in these Amended and Restated Articles of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Florida, and all rights herein conferred are granted subject to this reservation.

4. These Amended and Restated Articles of Incorporation have been adopted and approved by vote of the Board of Directors on April 21, 2000 and by the shareholders on April 21, 2000, in accordance with applicable Florida law. The number of votes for the amendments are herein were sufficient for shareholder approval of such amendments.

[Remainder of page intentionally left blank. Next page is signature page.]



IN WITNESS WHEREOF, eANGLER, INC., has caused these Amended and Restated Articles of Incorporation to be signed by its President as of this 21 day of April, 2000.

eANGLER, INC.

By Michael B. Davis  
Michael B. Davis  
President