

# V35671

Holland & Knight LLP  
Requester's Name

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Address

425-5675  
City/State/Zip Phone #

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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

1. Solvent, Inc  
(Corporation Name)

V35671  
(Document #)

Amended & Restated

2. \_\_\_\_\_  
(Corporation Name)

(Document #)

3. \_\_\_\_\_  
(Corporation Name)

(Document #)

4. \_\_\_\_\_  
(Corporation Name)

(Document #)

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**NEW FILINGS**

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

**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

Examiner's Initials

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
SOLUNET, INC.

FILED  
01 AUG 20 PM 1:09  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Section 607.1006, Florida Statutes, this Florida profit corporation adopts the following amended and restated articles of incorporation:

**ARTICLE I**

The name of the corporation is Solunet, Inc. (the "Corporation").

**ARTICLE II**

The Corporation is authorized to issue three classes of shares. The total number of shares the Corporation is authorized to issue is Fifty Seven Million Six Hundred Ninety Two Thousand Four Hundred Fifty Four (57,692,454) shares. The preferences, limitations and relative rights of the three classes of shares of the Corporation are as follows:

A. Common Stock

1. Number, Designation and Par Value. The Corporation is authorized to issue Fifty Million (50,000,000) shares designated as "Common Stock," .001 par value per share (the "Common Stock").
2. Voting. All voting rights of the Corporation, subject to any preferences or rights that may be granted to the holders of the Preferred Stock (as defined below), shall be exercised by the holders of the Common Stock.
3. Net Assets. The holders of the Common Stock, subject to any preferences or rights that may be granted to the holders of the Preferred Stock, shall be entitled to receive the net assets of the Corporation upon the dissolution of the Corporation.
4. Payment. All shares of the Common Stock shall be fully paid and non-assessable.

B. Preferred Stock

1. Number, Designation and Par Value. The Corporation is authorized to issue Three Million Eight Hundred Forty Six Thousand Two Hundred Twenty Seven (3,846,227) shares designated as "Series A Preferred Stock," .001 par value per share (the "Series A Preferred Stock") and Three Million Eight Hundred Forty Six Thousand Two Hundred Twenty Seven (3,846,227) shares designated as "Series A1 Preferred Stock," .001 par value per share (the "Series A1 Preferred Stock"). The Series A Preferred Stock and the Series A1 Preferred Stock are collectively referred to herein as "Preferred Stock."
2. Preferred Stock. The preferences, limitations and rights of the Preferred Stock are as set forth below:

(a) Dividend Provisions. Subject to the rights of any other series of Preferred Stock which may from time to time come into existence ("Other Preferred Stock"), the holders of shares of Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation. The Preferred Stock shall accrue dividends in an amount per annum equal to eight percent (8%) of the Original Purchase Price (as defined in Section 2(b)(vii) below) on each outstanding share of Preferred Stock, payable when, as and if declared by the Board of Directors. Such dividends shall be cumulative. The rate of dividends on shares of Preferred Stock shall be subject to equitable adjustment for any stock split, combination, reclassification or other similar event involving the Preferred Stock.

If the Corporation shall declare and pay a dividend on the Common Stock, the Board of Directors shall also declare and pay a dividend on the Preferred Stock in an amount per share equal to the amount that would have been paid in respect of such share if on the record date it had been converted to Common Stock.

Notwithstanding any other provisions of these Amended and Restated Articles of Incorporation, following termination of the Corporation's election to be taxed under Subchapter S of the Internal Revenue Code of 1986, as amended (the "Code"), the Corporation may distribute (subject to compliance with any credit agreement or other debt instrument restricting its ability to do so), during the "post termination period" (as such term is defined in Section 1377(b)(1) of the Code), to those persons who were shareholders of the Corporation immediately prior to the earliest date on which any shares of Series A Preferred Stock were issued (the "Issue Date"), the total amount of the Corporation's accumulated and undistributed S-corporation earnings as of the Issue Date, pro rata in accordance with the amounts thereof previously allocated to such shareholders on the Corporation's federal income tax returns. If any person otherwise entitled to receive a distribution hereunder is indebted to the Corporation, the Corporation shall set off against the amount of such indebtedness any distribution otherwise payable to any such person, until the amount of such indebtedness has been satisfied in full. The Corporation may make additional distributions to such persons following each complete fiscal quarter ending during the post termination period. Each distribution shall not exceed 50% of the Corporation's operating cash flow for the quarter with respect to which such distribution is made, provided, however, that no more than one distribution may be made for each quarter. "Operating cash flow" for this purpose shall mean the sum of the Corporation's net cash provided by (used in) operating activities and net cash provided by (used in) investing activities, as set forth on the Corporation's consolidated statement of cash flows for the fiscal quarter with respect to which such distribution is to be made and determined in accordance with generally accepted accounting principles. The amount distributed shall be further limited to such amount as will not result in the Corporation's consolidated net worth, as defined under its then-existing senior bank credit facility, being less than 110% of any consolidated net worth maintenance covenant contained in such facility, as of the end of the relevant fiscal quarter. The Corporation shall determine the amount available for distribution hereunder by the 20<sup>th</sup> day of the month following the close of the fiscal quarter, and shall make any such distributions not later than the first business day of the second month after the close of such fiscal quarter.

(b) Liquidation Preference.

(i) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of Other Preferred Stock, the holders of the Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the Original Purchase Price (as defined in Section 2(b)(vii) below), plus accrued but unpaid dividends thereon. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then, subject to the rights of Other Preferred Stock, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(ii) Upon the completion of the distribution required by Section 2(b)(i) above and any other distribution that may be required with respect to Other Preferred Stock, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of the Common Stock pro rata based on the number of shares of Common Stock held by them.

(iii) For purposes of this Section 2(b), unless the holders of Preferred Stock elect otherwise, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (B) a sale of all or substantially all of the assets of the Corporation, unless in either case the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold at least fifty percent (50%) of the voting power of the surviving or acquiring entity.

(iv) In any of the events specified in (iii) above, if the consideration received by the Corporation is other than cash, its value will be deemed to be its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

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

(III) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (I), (II) or (III) 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 Preferred Stock.

(v) In the event the requirements of Section 2(b)(iv) are not complied with, the Corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section 2(b) have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(b)(vi) hereof.

(vi) The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than ten (10) days prior to the shareholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2(b), and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(vii) Original Purchase Price means \$2.64 per share, subject to appropriate adjustment for any stock splits, stock dividends, combinations, recapitalizations, reclassifications, mergers, consolidations and other similar events.

(c) Redemption.

(i) Corporation Initiated Redemption. On or at any time after December 31, 2009, the Corporation may redeem all or a portion of the then outstanding shares of Preferred Stock at a price per share equal to the sum of (i) the Original Purchase Price, (ii) the Redemption Premium (as defined below) and (iii) any accrued and unpaid dividends thereon as of but not including the Corporation Redemption Date defined below (the "Redemption Price"). In the event the Corporation determines to redeem a portion of the outstanding shares of Preferred Stock, the Corporation shall effect such redemption pro rata according to the number of shares held by each holder thereof. Nothing contained in this subsection (c) shall restrict the right of the holders of Preferred Stock to convert such holder's shares of Preferred Stock prior to the Corporation Redemption Date (as defined below).

(ii) Notice for Corporation Initiated Redemption. With respect to a redemption of Preferred Stock initiated by the Corporation, at least thirty (30) days prior written notice by certified or registered mail, postage prepaid, shall be given to the holders of record of the Preferred Stock to be redeemed, such notice to be addressed to each such holder at the address of such holder given to the Corporation for the purpose of notice, or if no such address appears or is so given, at the place where the principal office of the Corporation is located. Such notice shall state (A) the date on which such shares shall be redeemed (the "Corporation Redemption Date"), (B) the Redemption Price, (C) the then current Conversion Price (as defined below) and (D) the date of termination of the right to convert (which date shall not be earlier than thirty (30) days and not later than sixty (60) days after the above written notice by mail has been given) and shall call upon each such holder to surrender to the Corporation on said date at the place designated in the notice such holder's certificate or certificates representing the shares to be redeemed. On or after the Corporation Redemption Date stated in such notice, the holder of each share of Preferred Stock called for redemption shall surrender the certificate evidencing such shares to the Corporation at the place designated in such notice and shall thereupon be entitled to receive payment of the Redemption Price for the shares of Preferred Stock surrendered. If less than all the shares represented by any such surrendered certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. If such notice of redemption shall have been duly given, and if on the Corporation Redemption Date funds necessary for the redemption shall be available therefor, then, as to any certificates evidencing any Preferred Stock so called for redemption and not surrendered, all rights of the holders of such shares so called for redemption and not surrendered shall cease with respect to such shares, except only the right of the holders to receive the Redemption Price for such shares of Preferred Stock which they hold, without interest, upon surrender of their certificates therefor.

(iii) Trust Fund. On or prior to any Corporation Redemption Date, the Corporation shall deposit, with any bank or trust company in the State of Florida, as a trust fund, a sum sufficient to redeem, on the Corporation Redemption Date thereof, the shares called for redemption, with instructions and authority to the bank or trust company to give the notice of redemption thereof (or to complete the giving of such notice if theretofore commenced) and to pay, on or promptly after the Corporation Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share

certificates. The deposit shall constitute full payment of the shares to their holders and from and after the Corporation Redemption Date the shares shall no longer be outstanding, and the holders thereof shall cease to be shareholders with respect to such shares, and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the Redemption Price for the Preferred Stock which they hold, upon the surrender of their certificates therefor. Any monies so deposited on account of the Redemption Price of the Preferred Stock converted subsequent to the making of such deposit shall be repaid to the Corporation forthwith upon the conversion of such Preferred Stock. If the holders of the Preferred Stock so called for redemption shall not, at the end of ninety (90) days from the Corporation Redemption Date thereof, have claimed any funds so deposited, such bank or trust company shall thereupon pay over to the Corporation such unclaimed funds, and such bank or trust company shall thereafter be relieved of all responsibility in respect thereof to such holders and such holders shall look only to the Corporation for payment of the Redemption Price for the Preferred Stock which they hold.

(iv) Redemption Premium. "Redemption Premium" shall mean the per share amount equal to thirty percent (30%) of the Original Purchase Price per annum accrued daily from the date upon which the shares of Preferred Stock were first issued to the Corporation Redemption Date, compounded annually.

(v) Redemption at the Option of the Holders.

(A) (I) If at any time commencing on August 20, 2006, the Corporation receives a written request by the holders of not less than a majority of the outstanding shares of Series A Preferred Stock, the Corporation shall redeem the then outstanding shares of Preferred Stock in three equal annual redemptions, the first redemption (the "First Redemption Date") occurring within ninety (90) days of receipt of such notice and the second and third redemptions (the "Second Redemption Date" and the "Third Redemption Date", respectively), to occur on the first business day after the first and second anniversary of the First Redemption Date (the First Redemption Date, Second Redemption Date and Third Redemption Date are referred to individually as a "Redemption Date"). On each applicable Redemption Date, the Corporation shall redeem from each holder of Preferred Stock the Specified Number (as defined below) of the shares of Preferred Stock held by such holder at a price per share equal to (i) the Original Purchase Price, plus (ii) any accrued and unpaid dividends thereon as of but not including the applicable Redemption Date (the "Optional Redemption Price"). Once written notice of redemption has been given hereunder, the Corporation may not redeem any other securities until the Optional Redemption Price for all shares of Preferred Stock has been paid in full.

(II) With respect to any holder of shares of Preferred Stock, the "Specified Number" shall be (A) with respect to the First Redemption Date, one-third of the number of shares of Preferred Stock such holder holds on such date; (B) with respect to the Second Redemption Date, the number, if any, of shares of Preferred Stock held by such holder previously called for redemption but not yet redeemed

plus one half of the number of shares of Preferred Stock then held by such holder and not previously called for redemption (or, if it is not a whole number, the whole number nearest below); and (C) with respect to the Third Redemption Date, all of the shares of Preferred Stock then held by such holder.

(B) Optional Redemption Notice. The Corporation shall provide each holder of Preferred Stock with a written notice that other holders of such class of Preferred Stock have requested redemption (addressed to the holder at its address as it appears on the stock transfer books of the Company), not earlier than thirty (30) nor later than five (5) days before the applicable Redemption Date. The notice of such redemption shall specify (i) the Redemption Date; (ii) the Specified Number of the shares of Preferred Stock to be redeemed on the Redemption Date; (iii) the applicable Optional Redemption Price; and (iv) the place the holders of Preferred Stock may obtain payment of the applicable Optional Redemption Price upon surrender of their certificates. If funds are available on the applicable Redemption Date, then whether or not shares are surrendered for payment of the applicable Optional Redemption Price, the shares shall no longer be outstanding on and after the applicable Redemption Date and the holders thereof shall be entitled thereafter to receive the applicable Optional Redemption Price without interest upon the surrender of the share certificate.

(C) Insufficient Funds for Redemption. If on the applicable Redemption Date, funds of the Company legally available therefor shall be insufficient to redeem all the shares of Preferred Stock required to be redeemed as provided herein, funds to the extent legally available shall be used for such purpose and the Company shall effect such redemption pro rata according to the number of shares of Preferred Stock held by each holder subject to the redemption (a "Partial Redemption"). The Company shall make additional Partial Redemptions to the extent that funds are legally available therefor beginning thirty (30) days after the Redemption Date and each thirty (30) days thereafter until all outstanding shares of Preferred Stock subject to redemption have been redeemed. If less than all the shares represented by a share certificate are to be redeemed, the Company shall issue a new share certificate for the shares not redeemed.

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

(i) Optional Conversion.

(A) Subject to Section 2(d)(iii) below, each share of Preferred Stock 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 such stock, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing \$2.64 by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is



surrendered for conversion. The initial "Conversion Price" per share of Preferred Stock shall be \$2.64. Such initial Conversion Price shall be subject to adjustment as set forth in Section 2(d)(iv).

(B) Subject to and in compliance with the provisions of this Section 2(d), any shares of Series A1 Preferred may, at the option of the holder, be converted at any time into the same number of fully-paid and nonassessable shares of Series A Preferred Stock and any shares of Series A Preferred Stock may, at the option of the holder, be converted at any time into the same number of fully-paid and nonassessable shares of Series A1 Preferred Stock; *provided, however*, that no holder of Series A1 Preferred Stock shall be entitled to convert any such shares to the extent that, as a result of such conversion, such holder and its affiliates, directly or indirectly, would own, control or have the power to vote a greater number of shares of Series A Preferred Stock or other securities of the Corporation than such holder and its affiliates shall be permitted to own, control or have power to vote under any law, regulation, rule or other requirement of any governmental authority at the time applicable to such holder or its affiliates; *provided, however*, that each holder of Series A1 Preferred Stock may convert such shares into Series A Preferred Stock if such holder reasonably believes that such converted shares will be transferred within fifteen (15) days pursuant to (A) a consolidation or merger of the Corporation with or into any other corporation or entity or a sale of the Corporation by means of a sale of stock, (B) a sale, conveyance or disposition of all or substantially all of the assets of the Corporation, or (C) the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended (each, a "Conversion Event"), and such holder undertakes to promptly convert such shares back into Series A1 Preferred Stock if such shares are not transferred pursuant to a Conversion Event.

(ii) Automatic Conversion. Preferred Stock shall automatically be converted into shares of Common Stock at the applicable Conversion Price at the time in effect for such share immediately upon (except as provided below in Section 2(d)(iii)) (i) the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, the public offering price of which is not less than \$10.00 per share (adjusted to reflect subsequent stock dividends, stock splits or recapitalization) and which results in aggregate cash proceeds to the Corporation of at least \$30,000,000 (net of underwriting discounts and commissions) or (ii) the election of the holders of a majority of the outstanding shares of Series A Preferred Stock.

(iii) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, Series A Preferred Stock or Series A1 Preferred Stock, as the case may be, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the

certificate or certificates for shares of Common Stock, Series A Preferred Stock or Series A1 Preferred Stock, as the case may be, are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock, Series A Preferred Stock or Series A1 Preferred Stock, as the case may be, to which such holder shall be entitled as aforesaid. 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 Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock, Series A Preferred Stock or Series A1 Preferred Stock, as the case may be, issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(iv) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(A) If the Corporation shall issue, after the date of these Amended and Restated Articles of Incorporation (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Preferred Stock, as the case may be, in effect immediately prior to the issuance of such Additional Stock, the applicable Conversion Price for the Preferred Stock in effect immediately prior to each such issuance shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of shares of Additional 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 shares of Additional Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Preferred Stock and all convertible securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible), but not including in such calculation any additional shares of Common Stock issuable with respect to shares

of Preferred Stock, convertible securities, or outstanding options, warrants or other rights for the purchase of shares of stock or convertible securities, solely as a result of the adjustment of the Conversion Price (or other conversion ratios) resulting from the issuance of shares of Additional Stock causing such adjustment.

(I) No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in Sections 2(d)(iv)(A)(IV)(c) or (d) no adjustment of such Conversion Price pursuant to this Section 2(d)(iv)(A) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(II) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(III) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors in good faith irrespective of any accounting treatment.

(IV) In the case of the issuance (whether before, on or after the Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 2(d)(iv)(A) and Section 2(d)(iv)(B):

(a) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such

options or rights were issued and for a consideration equal to the consideration determined in the manner provided in Sections 2(d)(iv)(A)(II) and (III), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(b) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 2(d)(iv)(A)(II) and (III)).

(c) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no

further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(d) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(e) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 2(d)(iv)(A)(IV)(a) and (b) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 2(d)(iv)(A)(IV)(c) or (d).

(B) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 2(d)(iv)(A)(IV) by the Corporation after the Purchase Date) other than:

(I) Common Stock issued pursuant to a transaction described in Section 2(d)(iv)(C) hereof,

(II) Two Million One Hundred Seventy Nine Thousand Six Hundred Fifty Six (2,179,656) shares of Common Stock issuable or issued to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation,

(III) Ten Thousand (10,000) shares of Common Stock or Preferred Stock issuable upon exercise of other options outstanding as of the date of these Amended and Restated Articles of Incorporation,

(IV) Capital stock or warrants or options to purchase capital stock issued to unaffiliated entities of the Corporation in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation,

(V) Shares of Common Stock issued or issuable upon conversion of the Preferred Stock, and

(VI) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock.

(C) In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Preferred Stock shall be increased in proportion to such increase of the aggregate number of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 2(d)(iv)(A)(IV).

(D) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each of the Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(v) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 2(d)(iv)(C), then, in each such case for the purpose of this Section 2(d)(v), the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which

their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(vi) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 2(d) or Section 2(b)) provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of the number of shares of Common Stock deliverable upon conversion of the Preferred Stock would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 2(d) with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section 2(d) (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of each of the Preferred Stock) shall be applicable after that event.

(vii) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, 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 2(d) 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 Preferred Stock against impairment.

(viii) No Fractional Shares and Certificate as to Adjustments.

(A) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with one-half being rounded upward). Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(B) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Section 2(d), the Corporation, upon the written request of any holder of Preferred Stock, at the expense of the Corporation, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of 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 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion

Price for the Preferred Stock at the time in effect, and (C) 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 a share of the Preferred Stock.

(ix) 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) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(x) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, Series A Preferred Stock and Series A1 Preferred Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock, Series A Preferred Stock and Series A1 Preferred Stock, as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock, Series A Preferred Stock or Series A1 Preferred Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, 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, Series A Preferred Stock or Series A1 Preferred Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these articles.

(xi) Notices. Any notice required by the provisions of this Section 2(d) to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

(e) Voting Rights. The holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Series A Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock (in a single voting group), with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted)



shall be rounded to the nearest whole number (with one-half being rounded upward). Series A1 Preferred Stock shall be non-voting.

(f) Protective Provisions. So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least fifty percent (50%) of the then outstanding shares of Series A Preferred Stock (with each share to be entitled to one vote for each share of Common Stock into which it is then convertible), voting together as a class:

(i) authorize or issue, or obligate itself to issue, or permit any subsidiary to authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series A Preferred Stock with respect to voting, dividends or redemption or liquidation rights;

(ii) declare or pay dividends or other distributions on securities of the Corporation except as permitted under Section 2(a);

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Common Stock or Preferred Stock;

(iv) alter or change the rights, preferences or privileges of the shares of Preferred Stock so as to adversely affect the shares of such series, provided that a transaction resulting in a change of control of the Corporation, in and of itself, shall not be deemed to adversely affect such shares;

(v) increase or decrease the total number of authorized shares of Common Stock (including the number of shares reserved for employee stock option or incentive plans);

(vi) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any securities of the Corporation; provided, however, that this restriction shall not apply to redemptions under Section 2(c) or to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements approved by the Board of Directors and under which the Corporation has the option to repurchase such shares at cost or at fair market value upon the occurrence of certain events, such as the termination of employment;

(vii) amend these Amended and Restated Articles of Incorporation or the Corporation's Bylaws in any manner which would adversely affect the holders of Preferred Stock;

(viii) sell, assign, lease, convey, dispose or otherwise part with control of all or substantially all of the assets or business of the Corporation or merge or consolidate the Corporation with or into another corporation, or otherwise liquidate, wind up or dissolve the Corporation (whether in one transaction or a series of transactions);

- (ix) reclassify any securities of the Corporation;
- (x) enter into or amend any contract or other arrangement or transaction with any affiliate of the Corporation, other than a wholly owned subsidiary; or
- (xi) amend the Restricted Stock Agreement, dated as of August 20, 2001, among the Corporation, Michael Wertheimer and Helen Wertheimer.

(g) Status of Redeemed or Converted Stock. In the event any shares of Preferred Stock shall be redeemed or converted pursuant to Section 2(c) or Section 2(d) hereof, respectively, the shares so redeemed or converted shall be canceled and shall not be issuable by the Corporation. The Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

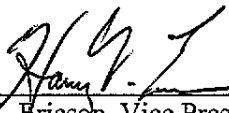
### **ARTICLE III**

The street address of the Corporation's principal office and the Corporation's mailing address is 1571 Robert J. Conlan Blvd., Suite 110, Palm Bay, Florida 32905.

The foregoing Amended and Restated Articles of Incorporation were approved and recommended to the shareholders by the Board of Directors by unanimous written consent, dated as of July 30, 2001, in accordance with the terms of Section 607.0821 of the Florida Statutes. The shareholders approved the amendments by means of a majority written consent, dated as of July 30, 2001. The number of shareholder votes cast for the amendments were sufficient for approval in accordance with the terms of Section 607.0704 of the Florida Statutes.

The undersigned declares under penalty of perjury that the matters set forth in the foregoing Amended and Restated Articles of Incorporation are true of his own knowledge.

Executed on August 17, 2001.

  
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Harry V. Ericson, Vice President and  
Chief Financial Officer