

V37988

Document Number Only

97 APR 21 PM 2:27
SECRETARY OF STATE
TALLAHASSEE, FLORIDA
FILED

CT CORPORATION SYSTEM

660 EAST JEFFERSON STREET

Requestor's Name
TALLAHASSEE, FL 32301

Address
222-1092

City State Zip Phone

100002148841--5
-04/21/97--01071--022
*****43.75 *****43.75

CORPORATION(S) NAME

Free Smart, Inc.

- Profit
- NonProfit
- Limited Liability Co.
- Foreign
- Limited Partnership
- Reinstatement
- Certified Copy
- Call When Ready
- Walk In
- Mail Out
- Amendment
- Dissolution/Withdrawal
- Annual Report
- Reservation
- Photo Copies
- Call if Problem
- Will Wait
- Merger
- Mark
- Other
- Change of R.A.
- Fictitious Name Filing
- CYCUS
- After 4:30
- Pick Up

| |
|-------------------|
| Name |
| Availability |
| Document Examiner |
| Updater |
| Verifier |
| Acknowledgment |
| W.P. Verifier |

4/21/97
File Today
Plank
AM 4/21
4/21

APR 21 1997
11 11 AM

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

FILED
97 APR 21 PM 2:27
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Section 607.1007 of the Florida Business Corporation Act, this corporation adopts the following Amended and Restated Articles of Incorporation.

FIRST: All prior Articles of the corporation are amended and restated in their entirety to read as follows:

ARTICLE I

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

ARTICLE II

The address of the Corporation's registered office in the State of Florida is 1200 South Pine Island Road, county of Broward. The name of its registered agent at such address is C T Corporation System.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Florida Business Corporation Act.

ARTICLE IV

The Corporation is authorized to issue two classes of stock to be designated, respectively, Preferred Stock, par value \$0.0001 per share (the "Preferred"), and Common Stock, par value \$0.0001 per share ("Common"). The total number of shares of Common that the Corporation shall have authority to issue is 50,000,000. The total number of shares of Preferred that the Corporation shall have authority to issue is 25,000,000, of which 11,100,000 are designated Series A Preferred Stock, par value \$0.0001 per share and 5,000,000 are undesignated Preferred Stock, par value \$0.0001 per share.

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

a. Dividends. When and as declared by the Board of Directors, the holders of Series A Preferred shall be entitled to receive, out of any funds legally available therefor, dividends at the rate of \$0.16 per share per annum payable in preference to any payment of any dividend on Common. After payment of such dividends, any additional dividends declared shall be payable entirely to the holders of Common. The right of the holders of Series A Preferred to receive dividends shall not be cumulative, and no right shall accrue to holders of Series A Preferred by reason of the fact that dividends on such shares are not declared or paid in any prior year.

b. Liquidation.

(i) Preferred Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of Series A Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common by reason of their ownership thereof, the amount of \$2.00 per share for each share of Series A Preferred then held by them, and, in addition, an amount equal to all declared but unpaid dividends on the Series A Preferred but no more. If the assets and funds thus distributed among the holders of the Series A Preferred are insufficient to permit the payment to such holders of their full preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series A Preferred in proportion to the number of shares of Series A Preferred held by each such holder.

(ii) Remaining Assets. After payment or setting apart of payment has been made to the holders of Series A Preferred of the full preferential amounts so payable to them, the holders of Common shall be entitled to receive *pro rata the remaining assets of the Corporation.*

(iii) Reorganization or Merger. A reorganization or merger of the Corporation with or into any other corporation or corporations, or a sale of all or substantially all of the assets of the Corporation, in which transaction the Corporation's stockholders immediately prior to such transaction own immediately after such transaction less than 50% of the equity securities of the surviving corporation (or its parent), shall be deemed to be a liquidation within the meaning of this Section IV(b). Any securities to be delivered to the holders of Preferred Stock and Common Stock upon a merger, consolidation or sale of substantially all of the assets of the Corporation shall be valued as follows:

(A) if traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three business days prior to the closing;

(B) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the three-day period ending three business days prior to the closing; and

(C) 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 not less than a majority of the shares of capital stock then outstanding.

(iv) Non-Cash Distributions. If any of the assets of the Corporation are to be distributed other than in cash under this Article or for any purpose, then the Board of Directors of the Corporation shall promptly engage an independent appraiser to determine the value of the assets to be distributed to the holders of the Preferred or Common. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each such holder of the appraiser's valuation.

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

(i) Right to Convert. Each share of Series A Preferred shall be convertible, at the option of the holder thereof, at any time into such number of fully paid and nonassessable shares of Common as is determined by dividing the Issuance Price (as defined below) by the Conversion Price (as defined below) in effect at the time of conversion. The Issuance Price for the Series A Preferred shall be \$2.00. The Conversion Price for the Series A Preferred shall initially be \$2.00 subject to adjustment as provided below. The number of shares of Common into which a share of Series A Preferred is convertible is hereinafter referred to as the "Conversion Rate" of the Series A Preferred.

(ii) Automatic Conversion. Each share of Series A Preferred shall automatically be converted into shares of Common at its then effective Conversion Rate immediately prior to the closing of a firm commitment underwritten

public offering pursuant to an effective registration statement under the Securities Act of 1933 (the "Act") covering the offer and sale of Common for the account of the Corporation to the public at a price per share (prior to underwriting commissions and offering expenses) of not less than \$5.00 per share (as appropriately adjusted for any subsequent stock splits, stock dividends, reclassifications and the like effected after the date on which the first share of Series A Preferred is issued) and an aggregate offering price of not less than \$7,500,000.

(iii) Mechanics of Conversion. Before any holder of Series A Preferred shall be entitled to convert the same into full shares of Common and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section IV(c)(ii) above, the outstanding shares of Series A Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common issuable upon such automatic conversion unless the certificates evidencing such shares of Series A Preferred are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Series A Preferred, a certificate or certificates for the number of shares of Common to which the holder shall be entitled and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common. 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 to be converted, or in the case of automatic conversion, on the date of closing of the offering, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

(iv) Fractional Shares. In lieu of any fractional shares to which the holder of Series A Preferred would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Series A Preferred as determined by the Board of Directors of the Corporation. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred of each holder at the time converting into Common and the number of shares of Common issuable upon such aggregate conversion.

(v) Adjustment of Conversion Price. The Conversion Price of Series A Preferred shall be subject to adjustment from time to time as follows:

(A) If the Corporation shall issue any Common other than "Excluded Stock" (as defined below) for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Common (excluding stock dividends, subdivisions, split-ups, combinations, dividends or recapitalizations which are covered by Sections IV(c)(v)(D), (E), (F), and (G)), the Conversion Price in effect after each such issuance shall thereafter (except as provided in this Section IV(c)(v)) be adjusted to a price equal to the quotient obtained by dividing:

(1) an amount equal to the sum of

A) the total number of shares of Common outstanding (including any shares of Common issuable upon conversion of the Preferred, or deemed to have been issued pursuant to Section IV(c)(v)(B)(3), immediately prior to such issuance multiplied by the Conversion Price in effect immediately prior to such issuance, plus

B) the consideration received by the Corporation upon such issuance,

by

(2) the total number of shares of Common outstanding (including any shares of Common issuable upon conversion of the Preferred or deemed to have been issued pursuant to Section IV(c)(v)(B)(3)) immediately prior to such issuance plus the additional shares of Common issued in such issuance (but not including any additional shares of Common deemed to be issued as a result of any adjustment in the Conversion Price resulting from such issuance).

(B) For purposes of any adjustment of the Conversion Price pursuant to Section IV(c)(v)(A), the following provisions shall be applicable:

(1) In the case of the issuance of Common for cash, the consideration shall be deemed to be the amount of cash paid therefor after deducting any discounts or commissions paid or incurred by the Corporation in connection with the issuance and sale thereof.

(2) In the case of the issuance of Common for a consideration in whole or in part *other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined by the Board of Directors of the Corporation, in accordance with generally accepted accounting treatment; provided, however, that if, at the time of such determination, the Corporation's Common is traded in the over-the-counter market or on a national or regional securities exchange, such fair market value as determined by the Board of Directors of the Corporation shall not exceed the aggregate "Current Market Price" (as defined below) of the shares of Common being issued.*

(3) In the case of the issuance of (i) options to purchase or rights to subscribe for Common (other than Excluded Stock), (ii) securities by their terms convertible into or exchangeable for Common (other than Excluded Stock) or (iii) options to purchase or rights to subscribe for such convertible or exchangeable securities:

A) the aggregate maximum number of shares of Common deliverable upon exercise of such options to purchase or rights to subscribe for Common 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 Section IV(c)(v)(B)(1) and (2)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common covered thereby;

B) the aggregate maximum number of shares of Common deliverable upon conversion of or in exchange 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 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 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 Section IV(c)(v)(B)(1) and (2));

C) on any change in the number of shares of Common deliverable upon exercise of any such options or rights or conversion of or exchange for such convertible or exchangeable securities, or on any change in the minimum purchase price of such options, rights or securities, other than a change resulting from the antidilution provisions of such options, rights or securities, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon (x) the issuance of such options, rights or securities not exercised, converted or exchanged prior to such change, as the case may be, been made upon the basis of such change or (y) the options or rights related to such securities not converted or exchanged prior to such change, as the case may be, been made upon the basis of such change; and

D) on 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 shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon the issuance of such options, rights, convertible or exchangeable securities or options or rights related to such convertible or exchangeable securities, as the case may be, been made upon the basis of the issuance of only the number of shares of Common actually issued upon the exercise of such options or rights, upon the conversion or exchange of such convertible or exchangeable securities or upon the exercise of the options or rights related to such convertible or exchangeable securities, as the case may be.

(C) "Excluded Stock" shall mean:

(1) up to 11,100,000 shares of Series A Preferred and the Common into which such shares of Series A Preferred are convertible; and

(2) all shares of Common Stock and all options to purchase Common Stock (and the Common Stock issuable upon exercise of such options) issued to officers, directors, consultants or employees of the Corporation pursuant to any plan or arrangement approved by the Board of Directors of the Corporation; provided, however, that only 1,665,000 shares of Common shall be "Excluded Stock" under this Section IV(c)(v)(C)(4);

(3) all shares of Common issued or issuable to lenders, licensors and leasing institutions pursuant to any financing, lending or leasing transaction approved by the Board of Directors.

All outstanding shares of Excluded Stock (including any shares issuable upon conversion of the Preferred but excluding shares reserved for issuance for option plans for which options have not yet been granted) shall be deemed to be outstanding for all purposes of the computations of Section IV(c)(v)(A).

(D) If the number of shares of Common outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common or by a subdivision or split-up of shares of Common, then, on the date such payment is made or such change is effective, the Conversion Price of the Series A Preferred shall be appropriately decreased so that the number of shares of Common issuable on conversion of any shares of Series A Preferred shall be increased in proportion to such increase of outstanding shares.

(E) If the number of shares of Common outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common, then, on the effective date of such combination, the Conversion Price of the Series A Preferred shall be appropriately increased so that the number of shares of Common issuable on conversion of any shares of Series A Preferred shall be decreased in proportion to such decrease in outstanding shares.

(F) In case the Corporation shall declare a cash dividend upon its Common payable otherwise than out of retained earnings or shall distribute to holders of its Common shares of its capital stock (other than Common), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common or other securities of the Corporation convertible into or exchangeable for Common), then, in each such case, the holders of the Series A Preferred shall, concurrent with the distribution to holders of Common, receive a like distribution based upon the number of shares of Common into which such Series A Preferred is then convertible.

(G) In case, at any time after the date hereof, of any capital reorganization, or any reclassification of the stock of the Corporation (other than a change in par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in any change in the Common), or of the sale or other disposition of all or substantially all the properties and assets of the corporation as an entirety to any other person, the shares of Series A Preferred shall, after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock

or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition such holder had converted its shares of Series A Preferred into Common. The provisions of this Section IV(c)(v)(G) shall similarly apply to successive reorganizations, reclassification, consolidations, mergers, sales or other dispositions.

(H) All calculations under this Section IV(c) shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(I) For the purpose of any computation pursuant to this Section IV, the "Current Market Price" at any date of one share of Common shall be deemed to be the average of the highest reported bid and the lowest reported offer prices on the preceding business day as furnished by the National Quotation Bureau, Incorporated (or equivalent recognized source of quotations); *provided, however*, that if the Common is not traded in such manner that the quotations referred to in this Section are available for the period required hereunder, Current Market Price shall be determined in good faith by the Board of Directors of the Corporation.

(vi) Minimal Adjustments. No adjustment in the Conversion Price for the Series A Preferred need be made if such adjustment would result in a change in the Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in the Conversion Price.

(vii) No Impairment. The Corporation will not 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 IV(c) 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 Series A Preferred against impairment. This provision shall not restrict the Corporation's right to amend its Articles of Incorporation with the requisite stockholder consent.

(viii) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Rate for the Series A Preferred pursuant to this Section IV(c), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon written request at any time of any holder of Series A Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) all such adjustments and readjustments, (ii) the Conversion Rate at the time in effect, and (iii) the number of shares of Common and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Series A Preferred.

(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 or other distribution (other than a cash dividend), 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 Series A Preferred at least twenty (20) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or 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 solely for the purpose of effecting the conversion of the shares of Series A Preferred such number of its shares of Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred; and if at any time the number of authorized but unissued shares of Common shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred, the

Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common to such number of shares as shall be sufficient for such purpose.

(xi) Notices. Any notice required by the provisions of this Section IV(c) to be given to any holder of Series A Preferred shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the Corporation's books.

(xii) Reissuance of Converted Shares. No shares of Series A Preferred which have been converted into Common after the original issuance thereof shall ever again be reissued and all such shares so converted shall upon such conversion cease to be a part of the authorized shares of the Corporation.

d. Voting Rights. The holder of each share of Series A Preferred shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall vote with holders of the Common upon the election of directors and upon any other matter submitted to a vote of stockholders, except those matters required by law to be submitted to a class vote and except as otherwise set forth herein. The holder of each share of Series A Preferred shall be entitled to that number of votes equal to the number of shares of Common into which each share of Series A Preferred could be converted on the record date for the vote or consent of stockholders. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula shall be disregarded. No stockholder shall be permitted to cumulate votes at any election of directors.

c. Protective Provisions.

(i) Series A Preferred. So long as shares of Series A Preferred are outstanding, this Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series A Preferred, voting together as one series:

(A) alter or change the rights, preferences, privileges or restrictions of the shares of Series A Preferred; or

(B) create a new class or series of shares having rights, preferences or privileges senior to the shares of Series A Preferred, except as provided by Section IV(e)(ii).

(ii) Blank Check Preferred. The Board of Directors is hereby authorized, subject to limitations prescribed by law and the provisions of this Article IV, to provide for the issuance of up to 5,000,000 additional shares of Preferred (with designations, powers, preferences and rights senior to, equal to, or junior to any existing series of Preferred) in one or more series, and by filing a certificate pursuant to the Florida Business Corporation Act, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences, and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

- a. The number of shares constituting that series and the distinctive designation of that series;
- b. The dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
- c. Whether that series shall have the voting rights in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

d. Whether that series shall have conversion privileges, and, if so, the terms and conditions of such privileges, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;

e. Whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable on case of redemption, which amount may vary under different conditions and at different redemption rates;

f. Whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms in the amount of such sinking funds;

g. The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and

h. *Any other relative rights, preferences and limitations of that series.*

The Corporation shall from time to time in accordance with the laws of the State of Florida increase the authorized amount of its Common if at any time the number of Common shares remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred.

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

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

a. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be determined as set forth in the Bylaws of the Corporation.

Each director shall serve until his or her successor is duly elected and qualified or until his or her death, resignation, or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

b. In furtherance and not in limitation of the powers conferred by the laws of the State of Florida, the Board of Directors is expressly authorized to make, alter, amend, or repeal the Bylaws of the Corporation.

c. The directors of the Corporation need not be elected by written ballot unless a stockholder demands election by written ballot at a meeting of stockholders and before voting begins, or unless the Bylaws of the Corporation so provide.

d. Advance notice of stockholder nomination for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

ARTICLE VII

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

ARTICLE VIII

a. To the fullest extent permitted by the Florida Business Corporation Act as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

b. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

c. Neither any amendment nor repeal of this Article, nor the adoption of any provision of the Corporation's Articles of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article, would accrue or arise, prior to such amendment, repeal, or adoption of an inconsistent provision.

ARTICLE IX

Meetings of stockholders may be held within or without the State of Florida, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the laws of the State of Florida) outside of the State of Florida at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

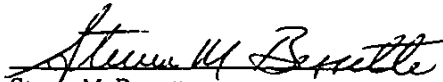
SECOND: That these Amended and Restated Articles of Incorporation were duly adopted by the shareholders of the Corporation in accordance with the provisions of Sections 607.1007 and 607.1006 of the Florida Business Corporation Act.

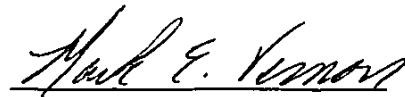
THIRD: The Corporation shall issue new stock certificates to existing shareholders in exchange for each old stock certificate outstanding.

FOURTH: The effective date of these Amended and Restated Articles of Incorporation is April 10, 1997. This is the date of adoption of these Amended and Restated Articles.

IN WITNESS WHEREOF, said EcoSmart, Inc. has caused these Amended and Restated Articles of Incorporation to be signed by Steven M. Bessette, its Executive Vice President and Chief Operating Officer and Mark E. Vernon, its Secretary, this 10th day of April 1997.

Dated: April 10, 1997


Steven M. Bessette
Executive Vice President and
Chief Operating Officer


Mark E. Vernon
Secretary

EcoSmart, Inc.

HAVING BEEN NAMED AS REGISTERED AGENT AND TO RECEIVE SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THESE PROVISIONS, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

CT CORPORATION SYSTEM

DATE: April 21, 1997

BY: Connie Bryan

Connie Bryan,
Special Assistant Secretary