

MWD
-15.02

01-23-2002

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings $\Rightarrow \Rightarrow \Rightarrow$ **RI**  101956841 U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Cruiseline Plus, Inc.

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State of **New York**
 Other _____

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: **Vacation.com, Inc.**
Internal Address: _____
Address: _____
Street Address: **1650 King Street, #450**
City: **Alexandria** State: **VA** Zip: **22314**

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State **of New York**
 Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
 (Designations must be a separate document from assignment)
 Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: **December 8, 1999**

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s)
1469427

Additional number(s) attached Yes No

6. Total number of applications and registrations involved: 1

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: **Margaret A. Boulware**
Internal Address: _____
Street Address: **Jenkins & Gilchrist P.C.**
1100 Louisiana, Suite 1800
City: **Houston** State: **TX** Zip: **77002**

7. Total fee (37 CFR 3.41).....\$ **40.00**


Enclosed
 Any deficiencies are
 Authorized to be charged to deposit account

8. Deposit account number:
10-0447 (41235-00085)

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Margaret A. Boulware  **Nov. 19, 2002**
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 16

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

01/23/2002 LNUELLER 00000101 1469427
01 FC:481 40.00 OP

TRADEMARK
REEL: 002428 FRAME: 0726

State of New York }
Department of State } SS:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

APR 18 2001



A handwritten signature in black ink, appearing to read "J. Shub", with a long horizontal line extending to the right.

Special Deputy Secretary of State

DOS-1266 (7/00)

CT-07

(2)

F 991209000910

**RESTATED
CERTIFICATE OF INCORPORATION
OF
TRAVEL ASSOCIATES NETWORK, INC.
UNDER SECTION 807 OF THE
BUSINESS CORPORATION LAW**

The undersigned, being, respectively the Chairman and Chief Executive Officer and the Assistant Secretary of Travel Associates Network, Inc., do hereby certify as follows:

1. The name of the Corporation is Travel Associates Network, Inc.
2. The Certificate of Incorporation was originally filed under the name "Cruiseline Plus, Inc." with the Secretary of State of New York on May 14, 1992.
3. A Restated Certificate of Incorporation was filed under the name "Travel Associates Network, Inc." with the Secretary of State of New York on September 9, 1998.
4. An Amendment to the Restated Certificate of Incorporation was filed under the name "Travel Associates Network, Inc." with the Secretary of State of New York on February 10, 1999.
5. The Restated Certificate of Incorporation of the Corporation as now in full force and effect is hereby amended to effect the following changes as authorized by Section 801 of the New York Business Corporation Law (the "NYBCL").
 - (a) To change the name of the Corporation as set forth in Article I of this Amended and Restated Certificate of Incorporation.
 - (b) To change the address of the registered agent as set forth in Article III of the Certificate of Incorporation.
6. To effect the foregoing amendment and make certain other non-material changes, the Certificate of Incorporation is hereby amended and restated in its entirety to read as follows (as so amended and restated, the "Certificate of Incorporation"):

ARTICLE I

The name of the Corporation is Vacation.com, Inc.

ARTICLE II

The principal office of the Corporation is located in the County of Nassau, State of New York.

ARTICLE III

The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation upon him or her is 1420 New York Avenue, N.W., Suite 550, Washington, D.C. 20005. CT Corporation System is designated as the registered agent of the Corporation in the State of New York, and process against the Corporation may be served upon such registered agent at 111 Eighth Avenue, New York, New York 10011.

ARTICLE IV

The nature of the business of the Corporation and the purposes for which it is organized are to engage in any lawful act or activity for which corporations may be organized under the NYBCL; provided, that the Corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

ARTICLE V

5.1 Capital Stock

(a) Classes. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 3,050,000, of which (a) 3,000,000 shares shall be common stock, \$.01 par value per share ("Common Stock"), and (b) 50,000 shares shall be Class A Convertible Preferred Stock, \$.01 par value per share ("Class A Preferred"); provided, that all of the outstanding shares of Class A Preferred may be redeemed for cash or converted into shares of Common Stock in accordance with the provisions of Article VI; and, provided further, that following the closing date (the "Closing Date") of the Corporation's Initial Public Offering (as hereinafter defined) the Corporation shall not issue any shares of Class A Preferred except as provided in Section 6.2.

2

(b) No Preemptive Rights. No shareholder of the Corporation shall have any preemptive rights to purchase, subscribe for or otherwise acquire any capital stock or other securities of the Corporation, whether now or hereafter authorized, and any and all preemptive rights hereby are denied.

(c) Combination of Issued and Outstanding Shares of Common Stock. Effective as of September 11, 1998, the Corporation effected a combination of the issued and outstanding shares of Common Stock whereby the number of shares of Common Stock held by each holder thereof was adjusted by multiplying such number by 1,000; provided, that the number of authorized shares of Common Stock of the Corporation was not affected by such adjustment to the number of shares of issued and outstanding Common Stock, and the number of shares of Common Stock which the Corporation shall have authority to issue shall remain as 3,000,000; and, provided, further, that the par value of the Common Stock remained at no par value per share, and the stated capital of the Corporation was adjusted to reflect the combination of the issued and outstanding shares of Common Stock as provided in this Section 5.1(c) based on the Common Stock having no par value.

5.2 Common Stock. The powers, designations, preferences and relative participating, optional or other special rights and the qualifications, limitations and restrictions of the Common Stock are as follows:

(a) Dividends. Subject to the rights of the holders Class A Preferred, the holders of the Common Stock shall be entitled to receive when, as, and if declared by the Board of Directors of the Corporation (the "Board"), out of funds legally available therefor, dividends payable in cash, stock or otherwise.

(b) Distributions Upon Liquidation. In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and after the holders of Class A Preferred shall have received the full preferential amounts (if any) to which such holders are entitled, the holders of Common Stock shall be entitled to share in the distribution of any remaining assets available for distribution to the holders of Common Stock.

(c) Voting Rights. Subject to the voting rights granted to the holders of Class A Preferred, the holders of Common Stock shall be entitled to one (1) vote per share in voting or consenting on the election of directors and for all other corporate purposes.

ARTICLE VI

6.1 Class A Preferred Stock: Number Authorized. The Corporation shall have authority to issue 50,000 shares of Class A Preferred, which shares shall have the powers, designations, rights and preferences set forth in this Article VI; provided, that following the Closing Date, the Corporation shall not issue any shares of Class A Preferred except as provided in Section 6.2.

6.2 Dividends. When and as declared by the Board and to the extent permitted under the NYBCL, the Corporation shall pay cumulative dividends to the holders of the Class A Preferred as provided in this Section 6.2. Dividends on each share of the Class A Preferred (a "Share") shall accrue on a daily basis at the rate of ten percent (10%) per annum of the sum of the Liquidation Value thereof plus all accumulated and unpaid dividends thereon from and including the date of issuance of such Share to and including the first to occur of (i) the date on which the Liquidation Value of such Share (plus all accrued and unpaid dividends thereon) is paid to the holder thereof in connection with the liquidation of the Corporation or the redemption of such Share by the Corporation or (ii) the date on which such Share otherwise is acquired by the Corporation. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends, and such dividends shall be cumulative such that all accrued and unpaid dividends shall be fully paid or declared with funds irrevocably set apart for payment before any dividends, distributions, redemptions or other payments may be made with respect to any Junior Securities (as hereinafter defined).

6.3 Liquidation. Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), each holder of Shares shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities, an amount in cash equal to the aggregate Liquidation Value of all Shares held by such holder (plus all accrued and unpaid dividends thereon), and the holders of Shares shall not be entitled to any further payment. If, upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of Shares are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid under this Section 6.3, then the entire assets available to be distributed to the Corporation's shareholders shall be distributed pro rata among such holders based upon the aggregate Liquidation Value (plus all accrued and unpaid dividends) of Shares held by each such holder. Not less than thirty (30) days prior to the payment date stated therein, the Corporation shall mail written notice of any such liquidation, dissolution or winding up to each record holder of Shares, setting forth in reasonable detail the amount of proceeds to be paid with respect to each Share and each share of Common Stock in connection with such liquidation, dissolution or winding up.

6.4 Priority of Class A Preferred on Dividends and Redemptions. As long as any Shares remain outstanding, without the prior written consent of the holders of a majority of the outstanding Shares, the Corporation shall not, nor shall it permit any Subsidiary (as hereinafter defined) to, redeem, purchase or otherwise acquire directly or indirectly any Junior Securities, nor shall the Corporation directly or indirectly pay or declare any dividend or make any distribution upon any Junior Securities; provided that the Corporation may repurchase shares of Common Stock or Shares, or both, from present or former employees of the Corporation and its Subsidiaries in accordance with the provisions of the Senior Management Agreements (as hereinafter defined).

6.5 Redemptions. Subject to any limitations or prohibitions set forth in the Financing Documents (as hereinafter defined) then outstanding:

(a) Optional Redemptions. To the extent permitted under the NYBCL, the Corporation may at any time and from time to time redeem all or any portion of the Shares then outstanding. Upon any such redemption, the Corporation shall pay a price per Share equal to the Liquidation Value thereof, plus all accrued and unpaid dividends thereon.

(b) Redemption Payments. For each Share which is to be redeemed hereunder, the Corporation shall be obligated on the Redemption Date (as hereinafter defined) to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such Share) an amount in immediately available funds equal to the Liquidation Value of such Share, plus all accrued and unpaid dividends thereon. If the funds of the Corporation legally available for redemption of Shares on any Redemption Date are insufficient to redeem the total number of Shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of Shares pro rata among the holders of the Shares to be redeemed based upon the aggregate Liquidation Value of such Shares held by each such holder, plus all accrued and unpaid dividends thereon. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Shares, such funds immediately shall be used to redeem the balance of the Shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

(c) Notice of Redemption. Except as otherwise provided herein, the Corporation shall mail written notice of each redemption of any Shares to each record holder thereof not more than sixty (60) nor less than five (5) days prior to the date on which such redemption is to be made. In case fewer than the total number of Shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed Shares shall be issued to the holder thereof without cost to such holder within five (5) business days after surrender of the certificate representing the redeemed Shares.

(d) Determination of the Number of Each Holder's Shares to be Redeemed. The number of Shares to be redeemed from each holder thereof in redemptions hereunder shall be the number of Shares determined by multiplying the total number of Shares to be redeemed times a fraction, the numerator of which shall be the total number of Shares then held by such holder and the denominator of which shall be the total number of Shares then outstanding.

(e) Dividends After Redemption. With respect to any Share to be redeemed hereunder, (i) no such Share shall accrue any dividends after the date on which the Liquidation Value of such Share (plus all accrued and unpaid dividends

thereon) is paid to the holder of such Share and (ii) all rights of the holder of such Share shall cease, and such Share no longer shall be deemed to be issued and outstanding, as of such date.

(f) Redeemed or Otherwise Acquired Shares. Any Shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares and shall not be reissued, sold or transferred.

(g) Redemptions or Acquisitions. The Corporation shall not, nor shall it permit any Subsidiary to, redeem or otherwise acquire any Shares, except as expressly authorized herein.

(h) Payment of Accrued Dividends. The Corporation may not redeem any Shares, unless all dividends accrued on the outstanding Shares have been declared and paid in full.

6.6 Voting Rights.

(a) Except as otherwise provided herein and as otherwise required by applicable law, the Class A Preferred shall have no voting rights; provided, that each holder of Shares shall be entitled to notice of all shareholders meetings at the same time and in the same manner as notice is given to all shareholders entitled to vote at such meetings.

(b) The Corporation shall not, without the consent of the holders of fifty-one (51%) percent of the outstanding Shares voting as a single class: (i) issue any class or series of equity security ranking senior to or in parity with the Class A Preferred as to payment of dividends or any payment on any liquidation of the Corporation or (ii) amend the Certificate of Incorporation or By-laws of the Corporation (the "By-laws") in any manner which would impair or reduce the rights of the Class A Preferred or enter into any agreement (other than the Financing Documents) that would restrict the Corporation's right to perform under the Shareholders' Agreement (as hereinafter defined) or the Senior Management Agreements.

6.7 Conversion.

(a) In the event the Corporation effects an Initial Public Offering, the holders of a majority of all outstanding Shares shall have the right, on or prior to the Closing Date, to elect to cause the conversion of each outstanding Share not theretofore redeemed pursuant to Section 6.5 into the number of shares of fully paid and nonassessable Common Stock obtained by dividing (x) the then applicable Liquidation Value (plus all accrued but unpaid dividends thereon) by (y) the price per share to the public of the Common Stock sold by the Corporation in the Initial Public Offering as set forth in the final prospectus relating thereto.

(b) The Corporation shall provide the holders of Shares with written notice of the Initial Public Offering at least fifteen (15) days prior to the Closing Date. Such notice shall specify the estimated initial public offering price of the Common Stock.

(c) The conversion of all Shares into shares of Common Stock shall be effected by the surrender of the certificate or certificates evidencing the Share or Shares to be converted (the "Converting Shares"), duly assigned to the Corporation or endorsed in blank, at the principal office of the Corporation (or such other office or agency of the Corporation as the Corporation may designate by written notice to the holders of Shares) at any time during its usual business hours. Promptly after such surrender and the receipt of such written notice, the Corporation shall issue and deliver a certificate or certificates evidencing the shares of Common Stock issuable upon such conversion (the "Converted Shares"). Such conversion, to the extent permitted by law, shall be deemed to have been effected as of the Closing Date at a time immediately prior to the closing of the Initial Public Offering, and at such time the rights of the holders of all Converting Shares as such holders shall cease, and the person or persons in whose name or names the certificate or certificates evidencing the Converted Shares are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the Converted Shares. Upon issuance of Converted Shares in accordance with this Section 6.7(c), such Converted Shares shall be deemed to be duly authorized, validly issued, fully paid and nonassessable.

(d) The Corporation shall take all such corporate and other actions as from time to time may be necessary to insure that there is an adequate number of shares of Common Stock authorized but unissued or held as treasury shares to allow the conversion of all outstanding Shares.

No fractional Converted Shares shall be issued by the Corporation. In lieu thereof, the Corporation shall pay each holder of a fractional Converted Share an amount in cash equal to the product of (x) the applicable fraction of the fractional Converted Share and (y) the price per share to the public of the Common Stock sold by the Corporation in the Initial Public Offering as set forth in the final prospectus relating thereto.

6.8 Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Shares. Upon the surrender of any certificate representing Shares at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing, in the aggregate, the number of Shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of Shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Shares represented by such new certificate from the date to which dividends have been fully paid on such Shares represented by the surrendered certificate.

6.9 Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation, or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Shares represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

6.10 Definitions.

(a) "Financial Institutions" means, at any date, the financial institutions party to the Financing Documents on such date.

(b) "Financing" means the Financing as defined in the Recapitalization Agreement.

(c) "Financing Documents" means all agreements, instruments and other documents executed or delivered in connection with the Financing, in each case as amended, supplemented or otherwise modified from time to time, including all substitutions therefor and replacements or refinancings thereof.

(d) "Initial Public Offering" means the first offering by the Corporation of its capital stock or equity securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force, with net proceeds to the Corporation of at least \$15,000,000.

(e) "Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Class A Preferred.

(f) "Liquidation Value" of any Share as of any particular date shall be equal to \$1,000.00.

(g) "Payoff Date" any date upon which (i) all of the liabilities and obligations of the Financial Institutions under the Financing Documents shall have expired, been satisfied or otherwise terminated, and (ii) the Financial Institutions shall have received the indefeasible payment in full, in cash, of the then outstanding obligations and liabilities of the Corporation and its Subsidiaries under the Financing Documents, in each case whether fixed, contingent, now existing or hereafter arising, created, assumed, incurred or acquired.

(h) "Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an



unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

(j) "Recapitalization Agreement" means the Recapitalization Agreement, dated as of August 31, 1998, by and among the Corporation and certain investors, as such agreement may from time to time be amended in accordance with its terms.

(j) "Redemption Date" as to any Share means the date specified in the notice of any redemption at the Corporation's option or at the holder's option or the applicable date specified herein in the case of any other redemption; provided that no such date shall be a Redemption Date unless the Liquidation Value of such Share (plus all accrued and unpaid dividends thereon) is actually paid in full on such date, and if not so paid in full, the Redemption Date shall be the date on which such amount is fully paid.

(k) "Senior Management Agreements" means the Senior Management Agreements entered into with certain senior executives of the Corporation pursuant to which such executives will purchase shares of the Corporation's Common Stock on a restricted basis.

(l) "Shareholders' Agreement" means the Shareholders' Agreement as defined in the Recapitalization Agreement.

(m) "Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or shall control the managing general partner of such limited liability company, partnership, association or other business entity.

6.11 Amendment and Waiver. No amendment, modification or waiver shall be binding or effective with respect to any provision of this Article VI without the prior written consent of the holders of a sixty-six percent (66%) of the Shares outstanding at the time such action is taken; provided, that no such action shall change (i) the rate at which or the manner in which dividends on the Shares accrue or the times at which such dividends become payable or the amount payable on redemption of the Shares or the times at which redemption of Shares is to occur or (ii) the percentage required to approve any change described in clause (i) above, without the prior written consent of the holders of at least eighty (80%) percent of the Shares

then outstanding; and provided, further, that no change in the terms of this Article VI may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of the applicable percentage of the Shares then outstanding which would be required to approve such change without such merger or consolidation. Notwithstanding anything to the contrary contained herein, no amendment, supplement, modification or waiver shall be binding with respect to any provision of Section 6.13 hereof or any provision of this sentence, in each case without the prior written consent of the agent for the Financial Institutions under the Financial Documents.

6.12 Notices. Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing, and shall be deemed to have been given when delivered personally or sent by facsimile or seventy-two (72) hours after deposited in the United States mail, first class, postage prepaid, or twenty-four (24) hours after being sent by reputable overnight courier service, charges prepaid, and shall be deemed to have been given when so mailed or sent (i) to the Corporation, at its principal executive offices and (ii) to any shareholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

6.13 Financing. Notwithstanding anything to the contrary contained in this Certificate of Incorporation, at any time prior to the Payoff Date, no holder of Shares shall have any right to receive, demand or cause to become due or payable any payment, other than in Shares as provided in Section 6.2, in respect of such Shares to the extent that such payment, other than in Shares as provided in Section 6.2, would not be permitted under the Financing Documents at such time.

ARTICLE VII

7.1 Power of Board and Qualification of Directors. The business of the Corporation shall be managed by the Board. Each director shall be at least 18 years of age.

7.2 Number of Directors. The number of directors of the Corporation shall be fixed from time to time in the manner provided in the By-laws and may be increased or decreased from time to time in the manner provided in the By-laws.

7.3 Resignations. Any director of the Corporation may resign at any time by giving written notice to the Board or to the Chairman of the Board or to the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

liabilities as the board of directors or the shareholders may determine in a specific instance or by resolution of general application. Any repeal or modification of this Article X by the shareholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or modification.

ARTICLE XI

A director of the Corporation shall, to the maximum extent permitted by the NYBCL, have no personal liability to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. If the NYBCL hereafter is amended to eliminate or further limit the liability of a director, then a director of the Corporation, in addition to the circumstances in which a director is not personally liable as set forth in the preceding sentence, shall have no such liability to the fullest extent permitted by the amended NYBCL. Any repeal or modification of this Article XI by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE XII

The Corporation shall have authority, to the fullest extent now or hereafter permitted by the NYBCL, or by any other applicable law, and to the extent and in the manner provided in the By-laws, to enter into any contract or transaction with one or more of its directors or officers, or with any corporation, partnership, joint venture, trust, association, or other entity in which one or more of its directors or officers are directors or officers, or have a financial interest, notwithstanding such relationships and notwithstanding the fact that the director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction.

ARTICLE XIII

13.1 General Right to Amend Certificate of Incorporation. The Corporation hereby reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and all rights conferred upon shareholders are granted subject to this reservation. Except as provided in Article VI hereof, any such amendment, alteration, change or repeal shall require the affirmative vote of both (a) a majority of the members of the Board then in office and (b) a majority of the combined voting power of all of the shares of all classes of capital stock of the Corporation then entitled to vote generally in the election of directors.

13.2 Abandonment of Proposed Amendment. By a vote of the majority of the members of the Board then in office, the Board may adopt a resolution providing that at any

time prior to the filing of any such amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the shareholders, the Board may abandon such proposed amendment without further action by the shareholders.

ARTICLE XIV

The duration of the Corporation is to be perpetual.

This Amended and Restated Certificate of Incorporation has been approved by the unanimous written consent of the Board of Directors and by the written consent of the holders of the requisite number of the outstanding shares of the Corporation's capital stock.

[THIS SPACE INTENTIONALLY LEFT BLANK]

13

13

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Certificate of Incorporation as of this 14 day of December, 1999 and we affirm the statements contained herein are true under the penalties of perjury.

R. Anthony McKimmon

Name: R. Anthony McKimmon
Title: Chairman and Chief Executive Officer

CE Temple

Name: Christopher Temple
Title: Assistant Secretary

14

14

TOTAL P.16