

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		CHANGE OF NAME	
CONVEYING PARTY DATA			
Name		Formerly	Execution Date
Entity Type			
Freeline Sports, Inc.		FORMERLY Freeline Skates, Inc.	01/31/2007
CORPORATION: DELAWARE			
RECEIVING PARTY DATA			
Name:		Freeline Sports, Inc.	
Street Address:		10 Hughes, # 107	
City:		Irvine	
State/Country:		CALIFORNIA	
Postal Code:		92618	
Entity Type:		CORPORATION: DELAWARE	
PROPERTY NUMBERS Total: 1			
Property Type		Number	Word Mark
Serial Number:		77009109	FREELINE F
CORRESPONDENCE DATA			
Fax Number:		(949)760-9502	
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:		949-760-0404	
Email:		efiling@kmob.com	
Correspondent Name:		Michael T. Richmond	
Address Line 1:		Knobbe Martens Olson & Bear, LLP	
Address Line 2:		2040 Main Street, 14th Floor	
Address Line 4:		Irvine, CALIFORNIA 92614	
ATTORNEY DOCKET NUMBER:		FRLNE.007T	
NAME OF SUBMITTER:		Michael T. Richmond	
Signature:		/mtr/	
Date:		10/18/2010	

OP \$40.00 77009109

**Total Attachments: 12**

source=AR Certificate - Series A 2007-06-26 FILED#page1.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page2.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page3.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page4.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page5.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page6.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page7.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page8.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page9.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page10.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page11.tif  
source=AR Certificate - Series A 2007-06-26 FILED#page12.tif

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
FREELINE SKATES, INC.

The undersigned, Fred Farrelly, hereby certifies that:

1. He is the duly elected and acting Chief Executive Officer of Freeline Skates, Inc., a Delaware corporation (the "Corporation").
2. The Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of Delaware on July 8, 2003.
3. The Certificate of Incorporation of the Corporation shall be amended and restated to read in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.
4. The foregoing Amended and Restated Certificate of Incorporation of the Corporation, in the form attached hereto as Exhibit A, has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by the Chief Executive Officer this 31<sup>st</sup> day of January, 2007.

  
\_\_\_\_\_  
Fred Farrelly  
Chief Executive Officer

**EXHIBIT A**

**ARTICLE I**

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

**ARTICLE II**

The address of the Company's registered office in the state of Delaware is 615 South DuPont Highway, City of Dover, County of Kent, State of Delaware 19901. The name of its registered agent at such address is National Corporate Research, Ltd.

**ARTICLE III**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

**ARTICLE IV**

The total number of shares of all classes of capital stock, which the Corporation shall have authority to issue, is Seventeen Million Four Hundred Thousand (17,400,000) shares, consisting of Fourteen Million Five Hundred Thousand (14,500,000) shares of Common Stock, with a par value of \$0.0001 per share (the "Common Stock"), and Two Million Nine Hundred Thousand (2,900,000) shares of Preferred Stock, with a par value of \$0.0001 per share (the "Preferred Stock"). All of the authorized shares of the Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Preferred"). The Series A Preferred is referred to hereafter as the "Preferred Stock."

A description of the respective classes of stock and a statement of the designations, preferences, voting powers (or no voting powers), relative, participating, optional or other special rights and privileges and the qualifications, limitations and restrictions of the Preferred Stock and Common Stock are as follows:

A. COMMON STOCK

1. Relative Rights of Preferred Stock and Common Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Common Stock are expressly made subject and subordinate to those that may be fixed with respect to any shares of the Preferred Stock.

2. Voting Rights. Except as otherwise required by law or this Certificate of Incorporation, each holder of Common Stock shall have one vote in respect of each share of stock held by him of record on the books of the Corporation on all matters submitted to a vote of stockholders of the Corporation.

3. Dividends. Subject to the preferential rights of the Preferred Stock, if any, the holders of shares of Common Stock shall be entitled to receive, when and if declared by the Board of Directors, out of the assets of the Corporation which are by law available therefor, dividends payable either in cash, in property or in shares of capital stock.

4. Dissolution, Liquidation or Winding Up. In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of the Preferred Stock, holders of Common Stock shall be entitled, unless otherwise provided by law or this Certificate of Incorporation, to receive all of the remaining assets of the Corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

5. Redemption. The Common Stock shall not be redeemable.

B. PREFERRED STOCK

1. Dividend Rights.

(a) The Holders of Preferred Stock, in preference to the holders of any other stock of the Corporation ("Junior Stock"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of the "Original Issue Price" per annum on each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Original Issue Price of the Series A Preferred Stock shall be \$0.0521739. The "Original Issue Date" shall mean the date on which a share of Preferred Stock was first issued following the date of filing of this Amended and Restated Certificate of Incorporation. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(b) So long as any shares of Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Corporation be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) above) on the Preferred Stock shall have been paid or declared and set apart. The provisions of this Section 1(b) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares

of any other Junior Stock, or (iii) any repurchase of any outstanding securities of the Corporation that is unanimously approved by the Corporation's Board of Directors.

2. Voting Rights. Except as otherwise provided herein or as required by law, the Preferred Stock shall be voted equally with the shares of the Common Stock of the Corporation and not as a separate class, at any annual or special meeting of stockholders of the Corporation, and may act by written consent in the same manner as the Common Stock.

3. Liquidation Rights.

(a) Upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the holders of Preferred Stock, in pari passu, shall be entitled to be paid out of the assets of the Corporation an amount per share of Preferred Stock equal to the Original Issue Price plus all declared and unpaid dividends on such shares of Preferred Stock to be paid prior to any distribution or payment to the holders of any Junior Stock, for each share of Preferred Stock held by them. 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 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.

(b) After the payment of the full liquidation preference of the Preferred Stock as set forth in Section 3(a) above, the remaining assets of the Corporation legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Preferred Stock, assuming the conversion of Preferred Stock into Common Stock as set forth herein.

(c) The following events shall be considered a liquidation under Section 3(a):

(i) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the Corporation is not the surviving entity or in which stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions, other than a new equity financing, in which in excess of fifty percent (50%) of the Corporation's voting power is transferred (an "Acquisition"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation (an "Asset Transfer").

(d) If, upon any liquidation, distribution, or winding up, the assets of the Corporation shall be insufficient to make payment in full to all holders of Preferred Stock of the liquidation preference set forth in Section 3(a)(1), then such assets shall be distributed among the holders of Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

4. Conversion Rights. The holders of the Preferred Stock shall have the following rights with respect to the conversion of the Preferred Stock into shares of Common Stock (the "Conversion Rights"):

(a) Optional and Automatic Conversion. Each share of Preferred Stock shall be initially convertible at the option of the holder thereof, without payment of additional consideration, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into one (1) fully paid and nonassessable share of Common Stock. The number of shares of Common Stock into which one share of Preferred Stock is convertible is hereinafter referred to as the "Conversion Rate". The Conversion Rate shall be subject to adjustment from time to time as provided for in Section 4(c).

Each share of Preferred Stock shall automatically be convertible into shares of Common Stock at the then applicable Conversion Rate upon either (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Act"), covering the offer and sale of Common Stock (whether for the account of the Corporation or for the account of one or more shareholders of the Corporation) at an aggregate offering price of not less than \$15,000,000 and at a public offering price (prior to underwriters' commissions and expenses) equal to or exceeding \$5.00 per share of Common Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) or (ii) the written consent of holders of a majority of the then outstanding shares of Preferred Stock voting together as a separate class. In the event of such an automatic conversion of the Preferred Stock as aforesaid, the conversion of Preferred Stock shall be deemed to have occurred automatically as of the closing of such sale of securities or the giving of such written consent, as applicable.

(b) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, such fractional amount shall be rounded to the nearest whole share. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, it shall surrender its certificate or certificates therefore, 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 such office that it elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of any automatic conversion

pursuant to Section 4(a)). The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock a certificate or certificates, registered in such names as are specified by the holder, for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Except to the extent otherwise provided in Section 4(a) with respect to automatic conversion, 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 issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(c) Adjustment. The adjustments for Subdivisions, Dividends, Combinations or Consolidations of Common Stock and Other Distributions are set forth below.

(1) Adjustment for Subdivisions. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a greater or lesser number of shares of Common Stock, the Conversion Rate in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased or decreased accordingly.

(2) Adjustment for Dividends. In the event the Corporation shall declare or pay any dividend on the Common Stock payable in Common Stock or in the event the outstanding shares of Common Stock shall be subdivided, by reclassification or otherwise, than by payment of a dividend in Common, into a greater number of shares of Common Stock, the Conversion Rate in effect immediately prior to such dividend or subdivision shall be proportionately increased:

(i) in the case of any such dividend, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend, or

(ii) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such Corporation action becomes effective.

If such record date shall have been fixed and such dividend shall not have been fully paid on the date fixed therefore, any adjustment previously made to the Conversion Rate with respect to such dividend shall be canceled as of the close of business on such record date, and thereafter the Conversion Rate shall be adjusted as of the time of actual payment of such dividend.

(3) Adjustment for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes the record date for the



determination of holders of Common Stock entitled to receive any distribution payable in securities of the Corporation other than shares of Common Stock and other than as otherwise adjusted in this Section 4, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Preferred Stock.

(4) Adjustment for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Rate then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such Preferred Stock immediately before that change.

(5) Adjustment for Sale of Shares Below Series Conversion Price.

(i) If at any time or from time to time after the Original Issue Date of the Series A Preferred Stock, the Corporation issues or sells, or is deemed by the express provisions of this Section 4(c)(5) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on any class of stock, without consideration or for an Effective Price (as hereinafter defined) less than the then effective Series Conversion Price for one or more respective series of Preferred Stock, then and in each such case the then existing Series Conversion Price for Preferred Stock will be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the applicable Series Conversion Price for that series by a fraction (A) the numerator of which will be (1) the number of shares of Common Stock outstanding and issuable upon conversion of all outstanding Preferred Stock immediately prior to such issue or sale and the exercise or conversion of all outstanding options, warrants and other convertible securities, plus (2) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection 4(c)(5)(ii)) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Series Conversion Price for Preferred Stock, and (B) the denominator of which will be the number of shares of Common Stock outstanding

and issuable upon conversion of all outstanding Preferred Stock and the exercise or conversion of all outstanding options, warrants and other convertible securities immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

(ii) For the purpose of making any adjustment required under this Section 4(c)(5), the consideration received by the Corporation for any issue or sale of securities will (A) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale and without deduction of any expenses payable by the Corporation, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of making any adjustment required under this Section 4(c)(5), if the Corporation issues or sells any rights or options for the purchase of, or stock or other securities convertible into, shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") and if the Effective Price of such Additional Shares of Common Stock is less than the Series Conversion Price for Preferred Stock, in each case the Corporation will be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Corporation will be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of rights or options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events, the Effective Price will be recalculated using the figure to which such

minimum amount of consideration is reduced; *provided further* that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights or options or Convertible Securities is subsequently increased, the Effective Price will be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of any Series Conversion Price for any series, adjusted upon the issuance of such rights, options or Convertible Securities, will be made as a result of the actual issuance of shares of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities will expire without having been exercised, each applicable Series Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities will be readjusted to the Series Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided that* such readjustment will not apply to prior conversions of Preferred Stock.

(iv) *"Additional Shares of Common Stock"* will mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 4(c)(5), whether or not subsequently reacquired or retired by the Corporation other than:

(A) the issuance of capital stock to employees, consultants, officers or directors of the Corporation pursuant to stock purchase or stock option plans approved by the Board (including options granted prior to the filing of this Amended and Restated Certificate);

(B) the issuance of securities in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board;

(C) the issuance of securities to financial institutions or lessors in connection with commercial credit arrangements, equipment financings, or similar transactions, the terms of which are approved by the Board;

(D) shares issued upon conversion of the Series A Preferred Stock;

(E) the issuance of securities in a public offering prior to or in connection with which all outstanding shares of the Preferred Stock will be converted into Common Stock;

(F) the issuance of securities pursuant to options, warrants, notes, or other rights to acquire securities of the Corporation outstanding as of the date of this Restated Certificate;

(G) stock splits, stock dividends or like transactions;

(H) any issuances of securities made by the Corporation in connection with corporate partnering arrangements with any customer or supplier the terms of which have been approved by the Board including at least one outside director; or

(I) the issuance of securities issued with the affirmative vote of at least a majority of the then outstanding shares of Preferred Stock,

(J) the issuance of Series A Preferred Stock.

The "Effective Price" of Additional Shares of Common Stock will mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this Section 4(c)(5), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section 4(c)(5), for such Additional Shares of Common Stock.

(d) Conversion Rate.

(1) The Conversion Rate in effect at any time for conversion of any series of Preferred Stock (each a "Series Conversion Rate") shall be the quotient obtained by dividing the sum of (i) Original Issue Price plus (ii) any accumulated and unpaid dividends on such series, by the "Series Conversion Price", calculated as provided in this Section 4(d).

(2) The conversion price for each series of Preferred Stock shall initially be the Original Issue Price of the series (the "Series Conversion Price"). Such initial Series Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series Conversion Price herein shall mean the Series Conversion Price for the Preferred Stock as so adjusted.

(e) No Impairment. The Corporation shall not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provision of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Preferred Stock against impairment.

5. Protective Covenants. So long as any shares of Preferred Stock remain outstanding, the Corporation will not, without the approval, by vote or written consent, of the holders of a majority of the Preferred Stock then outstanding, voting together as a single class:

(a) Amend the Corporation's Certificate of Incorporation or Bylaws in any manner that is adverse to any of the rights, preferences or privileges of the Series A Preferred Stock;

(b) Liquidate, dissolve or wind up the affairs of the Corporation (including any deemed liquidation event under Section 3(c));

(c) Authorize or issue, or obligate itself to issue, any equity security senior to or on a parity with the Series A Preferred Stock (including any additional shares of Series A Preferred Stock);

(d) Purchase or redeem or pay any dividend on any capital stock prior to the Series A Preferred Stock, other than stock repurchased from former employees or consultants in connection with the cessation of their employment/services at the lower of fair market value or cost; or

(e) Increase the size of the Board of Directors.

6. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued; and in addition, the Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized stock.

7. No Preemptive Rights. Stockholders shall have no preemptive rights.

8. Redemption. The Preferred Stock shall not be redeemable.

#### ARTICLE V

No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article Fifth by the stockholders 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 with respect to acts or omissions occurring prior to such repeal or modification.

#### ARTICLE VI

This Corporation reserves the right to adopt, amend, alter, supplement, rescind or repeal in any respect any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute or applicable law, and all rights conferred upon stockholders herein are granted subject to this reservation.

#### ARTICLE VII

The Board of Directors may from time to time adopt, amend, alter, supplement, rescind or repeal any or all of the Bylaws of this corporation without any action on the part of the stockholders; provided, however, that the stockholders may adopt, amend or repeal any Bylaw adopted by the Board of Directors, and no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement adopted by the stockholders.

#### ARTICLE VIII

The number of directors of the Corporation shall be set from time to time by resolution of the Board of Directors.

#### ARTICLE IX

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

#### ARTICLE X

Meetings of stockholders may be held within or outside the State of Delaware, as the Bylaws may provide. The books of this corporation may be kept (subject to any statutory requirements) outside the State of Delaware 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.